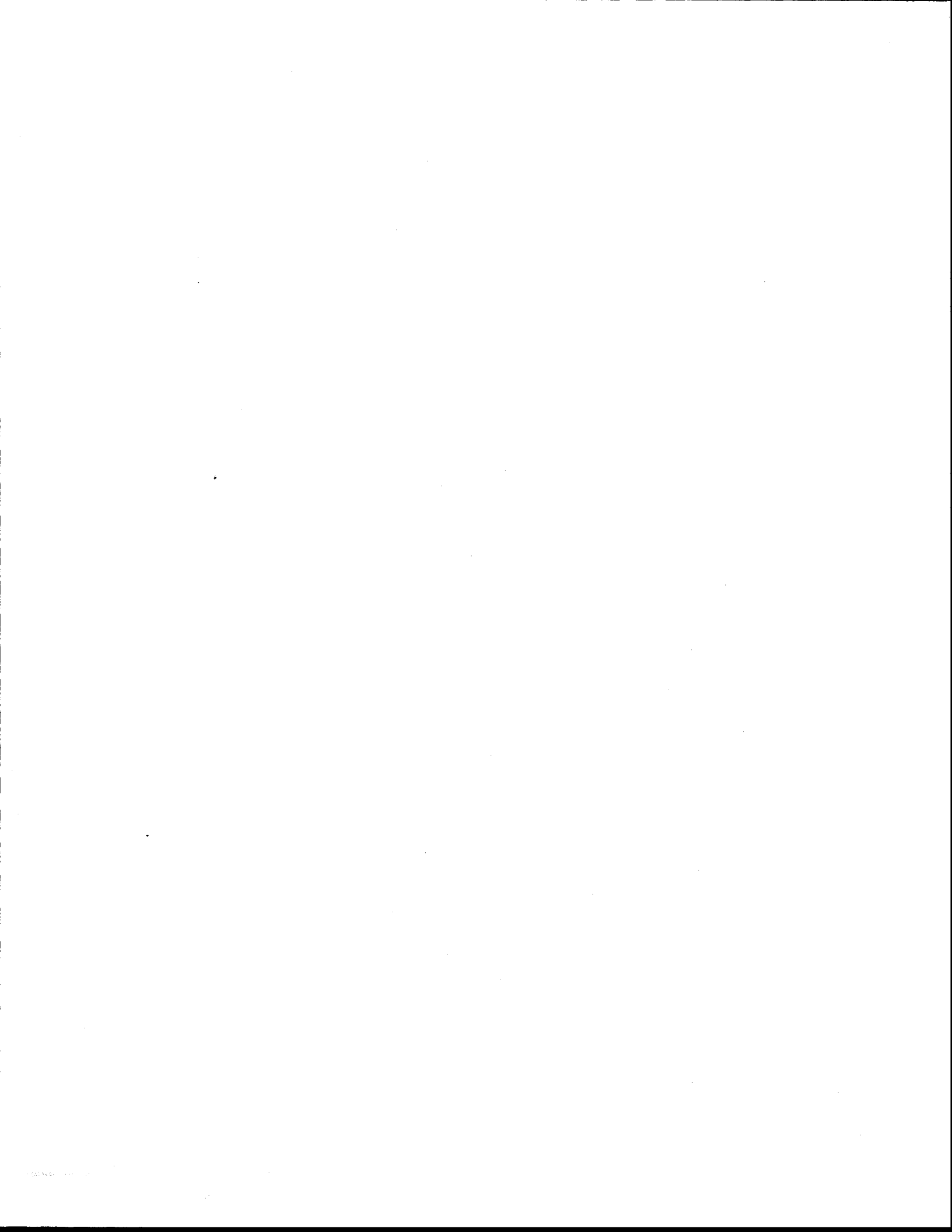


1973 REPORTS

LEGISLATIVE RESEARCH COMMISSION

NORTH CAROLINA MOTOR VEHICLE LAWS

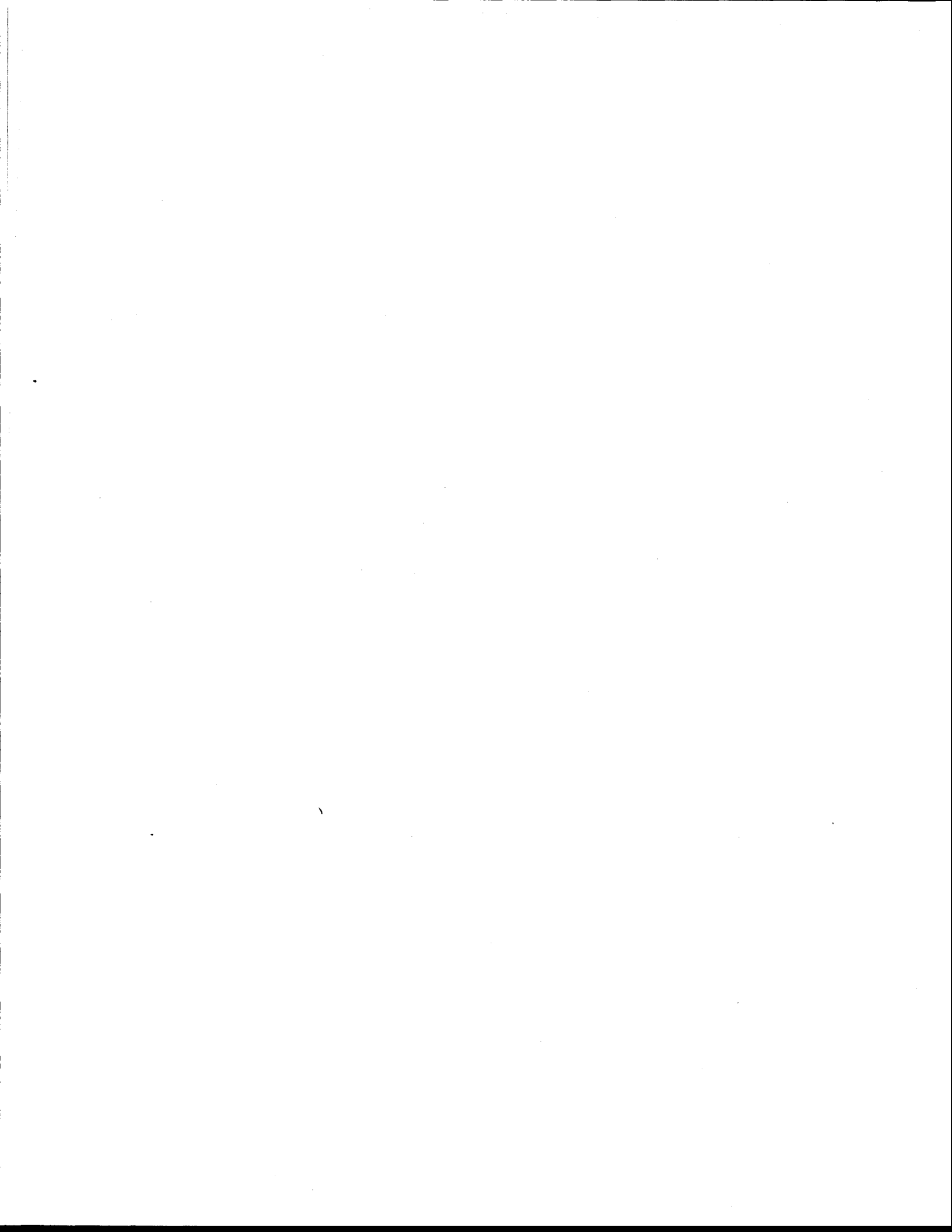


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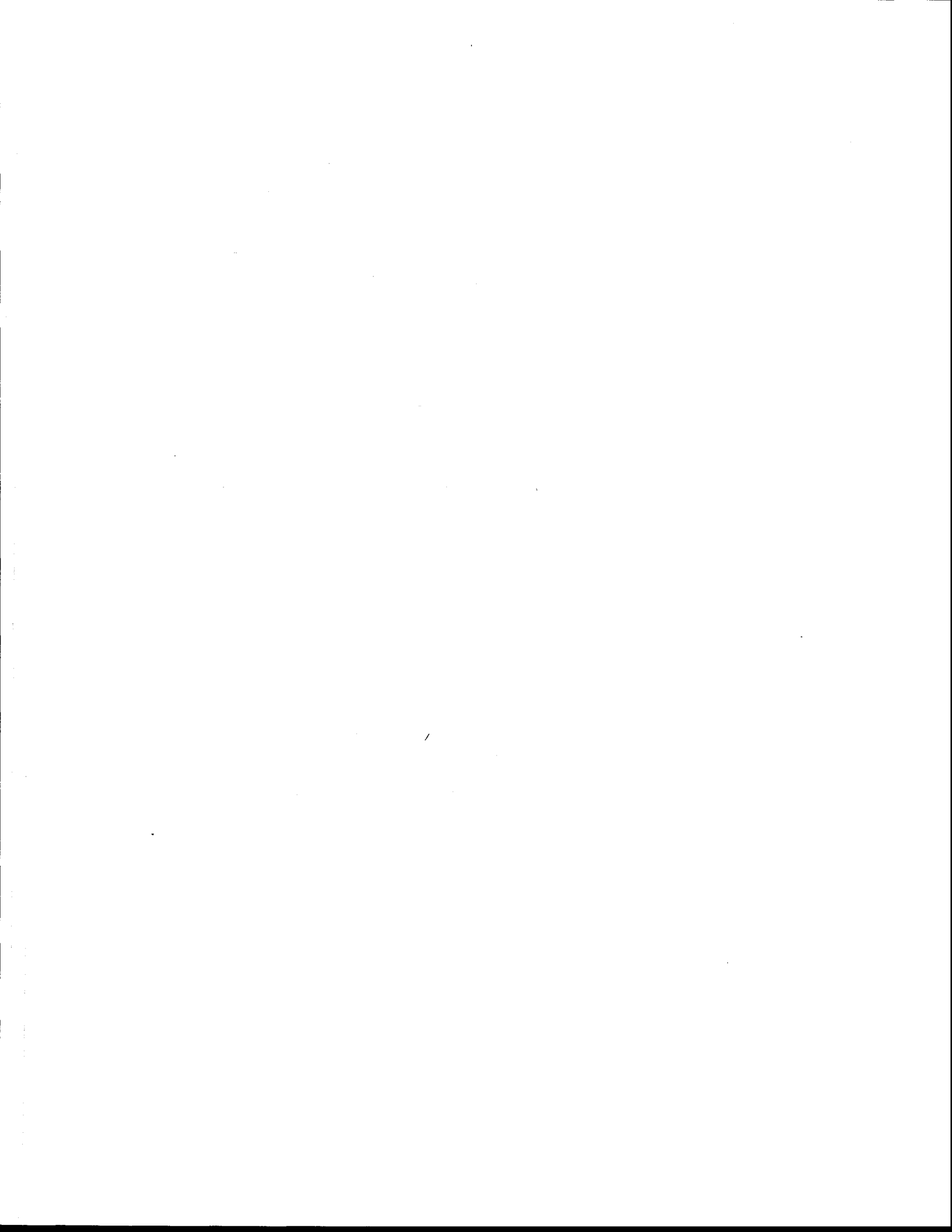
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INTRODUCTION

On July 14, 1971, the Senate of the North Carolina General Assembly adopted Senate Resolution 964 directing the Legislative Research Commission to "study the laws of the State relating to motor vehicles and to recommend such revision of Chapter 20 as it may deem advisable, to the end that such laws shall be more cohesive, more easily understood and less ambiguous..." (A copy of SR 964 is contained in Appendix I.)

The Co-Chairmen of the Legislative Research Commission appointed Representative Willis P. Whichard Chairman of a Committee to undertake the study directed by SR 964 and to report findings to the full Commission. Chairman Whichard and Senator Jones are members of the Legislative Research Commission; other members of the Committee to Study the North Carolina Motor Vehicle Laws were drawn from the General Assembly at large. The Committee members are: Representative James E. Long (Vice Chairman), Senator Zebulon D. Alley, Representative Laurence A. Cobb, Representative Richard S. James, Senator F. O'Neil Jones, Senator Phillip J. Kirk, Jr. and Representative Jimmy L. Love.



COMMITTEE PROCEEDINGS

The Committee on Motor Vehicles began its study on January 25, 1972, and completed its work on September 28, 1972. During the course of its deliberations, the Committee heard from various interested parties at Committee meetings and received written responses from Judges and Solicitors across the state. (A list of Committee meetings and participants at the meetings is contained in Appendix II; a catalogue of responses to a letter to all Judges and Solicitors is contained in Appendix III.)

In its initial discussions, the Committee considered the scope, method and direction of the study. Since the Motor Vehicle Chapter is so lengthy, about 300 sections, it would be next to impossible for the Research Commission to rewrite the whole chapter in just one interim period. The Committee decided to concentrate on the "Rules of the Road" portion of the Motor Vehicle Laws and to examine Chapter 20 in light of the SR 964 directive to recommend changes to assist understanding and reduce ambiguity. Mr. Joe W. Garrett, N. C. Commissioner of Motor Vehicles gave his support for the Committee's decision to narrow the scope of inquiry to the "Rules of the Road" portion of Chapter 20. (A December 21, 1971, letter expressing Mr. Garrett's opinion on this matter is contained in Appendix IV.)

As a format for its examination of portions of Chapter 20, the Committee compared sections of the North Carolina General

Statutes (G.S.) with related sections of the Uniform Vehicle Code (UVC). [An explanation of the UVC and material reflecting main areas of difference from the General Statutes are contained in Appendix V.]

In some instances the Committee feels that the approach of the UVC is an improvement over the present General Statutes; in other instances the Committee has chosen to recommend modification outside of the UVC or continuation of the present General Statutes. The two areas of recommended statutory changes which are most responsive to the resolution direction are: [1] Consolidation of the various definition sections (Recommended G.S. 20-1), and [2] Complete revision of the criminal penalty provisions (Recommended G.S. 20-176, etc.). The Committee feels that adoption of the definition and penalty changes, along with the other recommended changes that follow, will substantially improve the North Carolina Motor Vehicle Laws.

Consolidation of the definitions will combine the different treatment given the same words in four sections of the present Statutes and will place most of the definitions in a single section at the beginning of Chapter 20. If the consolidation is adopted it will not be necessary to know that presently "public vehicular area" is defined only in G.S. 20-16.2(g), the definition will be found in the general definition section at the beginning of Chapter 20 and it will apply to the whole Chapter.

The recommended modification of the penalty provisions is

an attempt to make it easier to find the penalty for specific offenses. Most of the penalties would be either in the section defining the offense or in a general penalty section, recommended G.S. 20-176. The recent Argersinger Case, which prohibits imposition of prison sentences without legal representation at trial, was examined in connection with the penalty revision; however, the effect of the case on the work of the Committee was minimal. The question of whether or not to remove imprisonment provisions and replace them with fines or other measures is not within the scope of the Research Commission study authorization. The matter will undoubtedly come before the General Assembly during the next session. Under the current provisions calling for imprisonment, or under the Committee's recommended changes in penalty provisions, the trial judge has the option of: (1) appointing an attorney at the beginning of a trial and imposing a prison sentence at the conclusion, or (2) conducting the trial without an attorney, having made the preliminary decision not to consider a prison term as punishment. (Materials on the Argersinger Case are contained in Appendix VI.)

Witnesses who participated in Committee meetings and respondents to the Committee's letter (see Appendix III) have suggested that better indexing of Chapter 20 is a needed improvement. Since indexing of the General Statutes is the responsibility of the publishers, the Michie Company, the Committee has not suggested any revision of the index. However, Chairman Whichard has written to the Michie Company

and informed the firm of the various complaints about the indexing. (The correspondence is carried in Appendix VI.) Hopefully, adoption of some of the suggestions from this Committee Report will facilitate improvement of the index by the General Statutes publishers.

RECOMMENDED STATUTORY CHANGES

The Committee on Motor Vehicles has thoroughly examined the provisions of the North Carolina General Statutes that relate to the "Rules of the Road." In an attempt to present a useful revision of this portion of the North Carolina Motor Vehicle Laws, the following statutory changes are recommended:

(General Statute sections are set out as they would read if the Committee recommendations were adopted; the beginning of each section is identified by: ●. Where material has been added or substituted within the text of the statute sections, the new or changed wording is underscored; new paragraphs or sections are not underscored, but they are designated by marginal notes. Changes from the present statutory language are identified and explained in the comments following each section.)

⌈ Since the recommended changes in North Carolina "Rules of the Road" are both broad and extensive, it is suggested that any of the changes that are adopted by the 1973 General Assembly become effective on January 1, 1974, giving the motoring public time to learn about the nature and extent of the changes.⌋

List of General Statutes sections that
would be modified if the Committee
recommendations were adopted.

- G.S. 20-1. Definitions. -- New section, present section moved to G.S. 20-1.1.
- G.S. 20-1.1. Department of Motor Vehicles created; powers and duties. -- Moved from present G.S. 20-1.
- G.S. 20-4.13 and G.S. 20-4.14. (Nonresident violator compact.) -- New sections.
- G.S. 20-6. Definitions. -- Deleted, definitions merged with new G.S. 20-1.
- G.S. 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests. -- Modified.
- G.S. 20-17. Mandatory revocation of license by Department. -- Modified.
- G.S. 20-38. Definitions of words and phrases. -- Deleted, definitions merged with new G.S. 20-1.
- G.S. 20-116. Size of vehicles and loads. -- Subsection (i) deleted.
- G.S. 20-124. Brakes. -- Deleted.
- G.S. 20-129. Required lighting equipment of vehicles. -- Modified.
- G.S. 20-140. Reckless driving. -- Modified.
- G.S. 20-140.1. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways. -- New section, present section merged with G.S. 20-140.
- G.S. 20-140.2. Overloaded or overcrowded vehicle. -- Modified.
- G.S. 20-140.3. Special provisions for motorcycles. -- New section, partly from present G.S. 20-140.2.
- G.S. 20-141. Speed restrictions. -- Modified.
- G.S. 20-141.1. Restrictions in speed zones near schools. -- Deleted, merged with present G.S. 20-141.
- G.S. 20-141.3. Unlawful racing on streets and highways. -- Modified.

- G.S. 20-141.4. Homicide by vehicle. -- New section.
- G.S. 20-142. Railroad warning signals must be obeyed. -- Modified
- G.S. 20-143. Vehicles must stop at certain railway grade crossings. -- Modified.
- G.S. 20-143.1. Certain vehicles must stop at railway grade crossings. -- Modified.
- G.S. 20-146. Drive on right side of highway; exceptions. -- Modif
- G.S. 20-146.1. Operation of motorcycles. -- Modified.
- G.S. 20-149. Overtaking a vehicle. -- Modified.
- G.S. 20-150. Limitations on privilege of overtaking and passing. -- Modified.
- G.S. 20-152. Following too closely. -- Modified.
- G.S. 20-153. Turning at intersections. -- Modified.
- G.S. 20-154. Signals on starting, stopping or turning. -- Modified
- G.S. 20-155. Right-of-way. -- Modified.
- G.S. 20-156. Exceptions to right-of-way rule. -- Modified.
- G.S. 20-158. Vehicle control signs and signals. -- Modified.
- G.S. 20-158.1 Erection of "yield right-of-way" signs. -- Modified.
- G.S. 20-159. Passing streetcars. -- Deleted.
- G.S. 20-160. Driving through safety zone or on sidewalks prohibited. -- Modified.
- G.S. 20-161. Parking on highway prohibited; warning signals; removal of vehicles from highway. -- Modified.
- G.S. 20-162.2. Removal of unauthorized vehicles from private lots. -- Deleted, moved to G.S. 20-219.1.
- G.S. 20-162.3. Removal of unauthorized vehicles from service stations. -- Deleted, moved to G.S. 20-219.2.
- G.S. 20-163. Unattended motor vehicles. -- Modified.
- G.S. 20-164. Driving on mountain highways. -- Deleted.
- G.S. 20-165. Coasting prohibited. -- Modified.
- G.S. 20-165.1. One-way traffic. -- Modified.

- G.S. 20-166.1. Reports and investigations required in event of collision. -- Modified.
- G.S. 20-168. Drivers of State, county and city vehicles subject to provisions of this Article. -- Modified.
- G.S. 20-172. Pedestrians subject to traffic control signals. -- Modified.
- G.S. 20-173. Pedestrians' right-of-way at crosswalks. -- Modified.
- G.S. 20-174. Crossing at other than crosswalks. -- Modified.
- G.S. 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets. -- Subsection (c) deleted.
- G.S. 20-175.4. Violations made misdemeanor. -- Deleted.
- G.S. 20-176. Penalty for misdemeanor. -- Modified.
- G.S. 20-180. Penalty for speeding. -- Deleted, merged with G.S. 20-176.
- G.S. 20-215.1. Definitions. -- Modified.
- G.S. 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances. -- Modified.
- G.S. 20-219.1. Removal of unauthorized vehicles from private lots. -- New section, from old G.S. 20-162.2.
- G.S. 20-219.2. Removal of unauthorized vehicles from service stations. -- New section, from old G.S. 20-162.3.
- G.S. 20-279.1. Definitions. -- Modified.
- G.S. 20-279.14. Suspension to continue until judgment satisfied. -- Modified.
- G.S. 20-286. Definitions. -- Modified.
-
- G.S. 14-83. Unauthorized use of a conveyance; punishments; offense a lesser-included offense of larceny. -- New section.
- G.S. 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled access facilities. -- Moved to new G.S. 20-140.1.

PROPOSED CHANGES, NORTH CAROLINA GENERAL STATUTES

G.S. 20-1. Definitions.-- Unless the context otherwise requires, the following words and phrases, for the purpose of this Chapter, shall mean:

New Section

COMMENTS

The Committee recommends that present G.S. 20-1 be renumbered G.S. 20-1.1 so that a consolidated general definition section be inserted at the beginning of Chapter 20. In accomplishing this consolidation, the following provisions would be repealed: (Parts of the language of these repealed provisions would be modified and used in the new consolidated definition section, to become G.S. 20-1.)

G.S. 20-6 [All Subsections.]

G.S. 20-38 [All Subsections.]

G.S. 20-215.1(3)

G.S. 20-279.1(1)

G.S. 20-279.1(4)

G.S. 20-279.1(5)

G.S. 20-279.1(6)

G.S. 20-279.1(8)

G.S. 20-279.1(9)

G.S. 20-279.1(10)

G.S. 20-279.1(12)

G.S. 20-286 (1)

G.S. 20-286 (2)

G.S. 20-286 (9)

G.S. 20-286 (14)

The following provisions would be retained in their present sections but the subsections would have to be appropriately re-numbered:

G.S. 20-279.1 (2)
 G.S. 20-279.1 (3)
 G.S. 20-279.1 (7)
 G.S. 20-279.1 (11)

G.S. 20-286 (3)
 G.S. 20-286 (4)
 G.S. 20-286 (5)
 G.S. 20-286 (6)
 G.S. 20-286 (7)
 G.S. 20-286 (8)
 G.S. 20-286 (10)
 G.S. 20-286 (11)
 G.S. 20-286 (12)
 G.S. 20-286 (13)
 G.S. 20-286 (15)
 G.S. 20-286 (16)

Most of the various definition sections that are now spread around in the different articles of Chapter 20 would be consolidated into a single section to apply to all of the Chapter. The new G.S. 20-1 would include terms that have uniform application throughout the Chapter; sections that define terms with peculiar application to only certain parts of the Chapter would be left in their present locations.

The recommended language for the introductory sentence of the new definition section is a combination of the present language in G.S. 20-6, G.S. 20-38, G.S. 20-215.1 and G.S. 20-286.

- - - - -

G.S. 20-1(1). Business District. - The territory prescribed as such by ordinance of the State Highway Commission.

COMMENTS

"Business District" is presently defined in G.S. 20-38(1) as "where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business purposes." The definition has proven to be one of the most unworkable in Chapter 20 because of difficulty in showing proper application of "seventy-five per cent," "frontage," "business purposes," etc. under speed limit statutes using the term "Business District." The Committee recommends revision of the speed limit statute (recommended G.S. 20-141) to eliminate the use of "Business District" and thus remove the requirement for proof of these elusive elements. Under recommended G.S. 20-141 posted signs would specify areas within municipal corporate limits with speed limits below 35 miles per hour.

Even with the recommended change in the speed limit statute, the present language defining "Business District" should be modified to remove difficulty with other sections using the term. (G.S. 20-143 and G.S. 20-152). The recommended new language defining the term would allow the Highway Commission to specifically designate territory as "Business District."

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G.S. 20-1(2). Cancelled.--As applied to operators' and chauffeurs' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

COMMENTS

The recommended language is the substance of present G.S. 20-6 "Cancelled."

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G.S. 20-1(3). Chauffeur.--Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property hauling vehicle or combination of vehicles licensed for more than 26,000 pounds gross weight and the driver of any passenger carrying vehicle of over nine (9) passenger capacity except the driver of a church bus, farm bus, school bus or an activity bus for a nonprofit organization when such bus is being operated for a nonprofit purpose, who holds a valid operator's license. Those under twenty years of age must be certified and licensed to operate a North Carolina school bus.

COMMENTS

The recommended language is the substance of present G.S. 20-6 "Chauffeur."

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G.S. 20-1(4). Commissioner.--The Commissioner of Motor Vehicles.

COMMENTS

The recommendation combines definitions in present G.S. 20-38 (2), G.S. 20-279.1(1) and G.S. 20-286(1).

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G.S. 20-1(5). Dealer.--Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semi-trailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer", "new motor vehicle dealer" and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

COMMENTS

The recommended language is the substance of present G.S. 20-38 (3); a cross reference to related definitions in present G.S. 20-238 is included.

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G.S. 20-1(6). Department.--The Department of Motor Vehicles acting directly or through its duly authorized officers and agents

COMMENTS

The recommendation combines definitions in present G.S. 20-6 "Department," G.S. 20-38(4) and G.S. 20-286(2); the language is the substance of G.S. 20-38(4).

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G.S. 20-1(7). Driver.--The operator of a vehicle.

COMMENTS

The recommendation is a new definition; "driver" is not defined in any part of present Chapter 20.

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G.S. 20-1(8). Essential Parts.--All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

COMMENTS

The recommended language is from present G.S. 20-38 (5).

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G.S. 20-1(9). Established place of business.--Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading and selling motor vehicles is or will be carried on and at which the books, records and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

COMMENTS

The recommended language is the substance of present G.S. 20-38(6); a cross reference to a related definition in present G.S. 20-286 is included.

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G.S. 20-1(10). Explosives.--Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

COMMENTS

The recommended language is from present G.S. 20-38(7).

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G.S. 20-1(11). Farm Tractor.--Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

COMMENTS

The recommended language is from present G.S. 20-38(8).

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G.S. 20-1(12). Foreign Vehicle.--Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

COMMENTS

The recommended language is from present G.S. 20-38(9).

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G.S. 20-1(13). Highway or Street.--The terms "Highway" or "Street" or a combination of the two terms shall be used synonymously. The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic.

COMMENTS

The recommendation combines present G.S. 20-6 "Highway" and G.S. 20-38(36).

- - - - -

G.S. 20-1(14). House Trailer.--Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

COMMENTS

The recommended language is from present G.S. 20-38(10).

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G.S. 20-1(15). Implement of Husbandry.--Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

COMMENTS

The recommended language is from present G.S. 20-38(11).

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G.S. 20-1(16). Intersection.--The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

COMMENTS

The recommended language is from present G.S. 20-38(12).

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G.S. 20-1(17). License.--Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

- (1) Any temporary license or learner's permit.
- (2) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
- (3) Any nonresidents' operating privilege.

COMMENTS

The recommendation replaces present G.S. 20-279.1(4); the language is from the Uniform Vehicular Code.

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G.S. 20-1(18). Local Authorities.--Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

COMMENTS

The recommended language is from present G.S. 20-38(13).

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G.S. 20-1(19). Manufacturer.--Every person, resident or nonresident of this State, who manufactures or assembles motor vehicles.

COMMENTS

The recommendation combines definitions in present G.S. 20-38(14) and G.S. 20-286(9); the language is the substance of G.S. 20-286(9).

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G.S. 20-1(20). Manufacturer's Certificate.--A certification on a form approved by the Department, signed by the manufacturer, indicating the name of the person or dealer to whom the therein described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Department may require.

COMMENTS

The recommended language is from present G.S. 20-38(15).

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G.S. 20-1(21). Metal Tire.--Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.

COMMENTS

The recommended language is from present G.S. 20-38(16).

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G.S. 20-1(22). Motorcycle.--A type of passenger vehicle as defined in Subsection 27.

COMMENTS

The recommendation refers to Subsection 27 of new G.S. 20-1 which uses language from the present G.S. 20-38(20).

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G.S. 20-1(23). Motor Vehicle.--Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

COMMENTS

The recommendation combines definitions in present G.S. 20-6 "Motor Vehicle", G.S. 20-38(17), G.S. 20-215.1(3) and G.S. 20-279.1(5); the language is the substance of G.S. 20-215.1(3).

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G.S. 20-1(24). Nonresident.--Any person whose legal residence is in some state, territory or jurisdiction other than North Carolina or in a foreign country.

COMMENTS

The recommendation combines definitions in present G.S. 20-6 "Nonresident", G.S. 20-279.1(6) and G.S. 20-38(18); the language is an expansion of that in G.S. 20-6.

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G.S. 20-1(25). Operator.--A person in actual physical control of a vehicle which is in motion or which has the engine running.

COMMENTS

The recommendation combines definitions in present G.S. 20-6 "Operator" and G.S. 20-279.1(8).

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G.S. 20-1(26). Owner.--A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

COMMENTS

The recommendation combines definitions from present G.S. 20-38(19) and G.S. 20-279.1(9); the language is from G.S. 20-38(19).

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G.S. 20-1(27). Passenger Vehicles.--(a) Excursion passenger vehicles--Vehicles transporting persons on sight-seeing or travel tours.

(b) For hire passenger vehicles.--Vehicles transporting persons for compensation. This classification shall not include vehicles of nine-passenger capacity or less operated as ambulances or operated by the owner where the cost of operation is shared by the passengers; vehicles transporting students for the public school system under contract with the State Board of Education; or vehicles leased to the United States of America or any of its agencies on a nonprofit basis.

(c) Common carriers of passengers.--Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

(d) Motorcycles.--Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, and three-wheeled vehicles while being used by law enforcement agencies.

(e) U-drive-it passenger vehicles.--Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

(f) Ambulances.--Vehicles equipped for transporting wounded, injured or sick persons.

(g) Private passenger vehicles.--All other passenger vehicles not included in the above definitions.

COMMENTS

The recommended language is a modification of present G.S. 20-38(

- - - - -

G.S. 20-1(28). Person.--Every individual, firm, partnership, association, corporation, governmental agency or combination thereof of whatsoever form or character.

COMMENTS

The recommendation combines definitions in present G.S. 20-6 "Person", G.S. 20-38(21), G.S. 20-286(14) and G.S. 20-279.1(10).

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G.S. 20-1(29). Pneumatic Tire.--Every tire in which compressed air is designed to support the load.

COMMENTS

The recommended language is from present G.S. 20-38(22).

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G.S. 20-1(30). Private Road or Driveway.--Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

COMMENTS

The recommended language is from present G.S. 20-38(23).

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G.S. 20-1(31). Property-Hauling Vehicles.--(a) Exempt for hire vehicles.--Vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the Utilities Commission or by the Interstate Commerce Commission; provided, that the term "for hire" shall include every arrangement by which the owner of a vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. The transportation of farm crops or products, including logs, bark, pulp and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.
2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor or trailer in a for hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.
6. Vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract, or the extension or renewal of such contract.
7. Vehicles leased for a term of one year or more to the same person when used exclusively by such person in transporting his own property.

(b) Common carrier of property vehicles.--Vehicles used for the transportation of property certified by the Utilities Commission or the Interstate Commerce Commission as common carriers.

(c) Private hauler vehicles.--Vehicles used for the transportation of property not falling within one of the above defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used exclusively for camping activities shall be classified as private passenger vehicles.

(d) Semitrailers.--Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

(e) Trailers.--Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

(f) Contract carrier of property vehicles.--Vehicles used for the transportation of property under a franchise permit of a regulated contract carrier issued by the Utilities Commission or the Interstate Commerce Commission.

COMMENTS

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The recommended language is from present G.S.20-38(24).

G.S. 20-1(32). Public Vehicular Area.--Any drive, driveway, road, roadway, street, or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina, or any of its subdivisions or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business, residential or municipal establishment providing parking space for customers, patrons, or the public.

COMMENTS

The recommended language is the substance of present G.S. 20-16.2(g); it would apply to all of Chapter 20. Present G.S. 20-139 uses "Public Vehicular Area", but the only definition of the term in Chapter 20 is restricted to G.S. 20-16.2(g).7

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G.S. 20-1(33). Reconstructed Vehicles.--Vehicles of a type required to be registered hereunder materially altered from their original construction by the removal, addition, or substitution of essential parts.

COMMENTS

The recommended language is from present G.S. 20-38(25).

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G.S. 20-1(34). Resident.--Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

COMMENTS

The recommendation combines identical definitions from present G.S. 20-6 "Resident" and G.S. 20-38(26).

- - - - -

G.S. 20-1(35). Residential District.--The territory prescribed as such by ordinance of the State Highway Commission.

COMMENTS

See the explanation in comments for recommended G.S. 20-1(1).
The recommended language replaces present G.S. 20-38(27).

- - - - -

G.S. 20-1(36). Revocation or Suspension.--The terms "Revocation" or "Suspension" or a combination of both terms shall be used synonymously. Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension.

COMMENTS

The recommendation is a combination of similar sections, present G.S. 20-6 "Revocation" and G.S. 20-6 "Suspension."

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G.S. 20-1(37). Road Tractors.--Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

COMMENTS

The recommended language is from present G.S. 20-38(28).

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G.S. 20-1(38). Roadway.--That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

COMMENTS

The recommended language is from present G.S. 20-38(29).

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G.S. 20-1(39). Safety Zone.--Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

COMMENTS

The recommended language is from present G.S. 20-38(30).

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G.S. 20-1(40). Security Agreement.--Written agreement which reserves or creates a security interest.

COMMENTS

The recommended language is from present G.S. 20-38(31).

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G.S. 20-1(41). Security Interest.--An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

COMMENTS

The recommended language is from present G.S. 20-38(32).

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G.S. 20-1(42). Solid Tire.--Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

COMMENTS

The recommended language is from present G.S. 20-38(33).

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G.S. 20-1(43). Specially Constructed Vehicles.--Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

COMMENTS

The recommended language is from present G.S. 20-38(34).

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G.S. 20-1(44). Special Mobile Equipment.--Every truck, truck-tractor, trailer or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a non-highway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses of other similar type feed additives for use in connection with the feed mixing, grinding or milling process.

COMMENTS

The recommended language is from present G.S. 20-38(35).

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G.S. 20-1(45). State.--A state, territory or possession of the United States, District of Columbia, Commonwealth of Puerto Rico or a Province of Canada.

COMMENTS

The recommended language is an expansion of present G.S. 20-279.1(12).

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G.S. 20-1(46). Street.--See recommended G.S. 20-1(13) Highway or Street.

- - - - -

G.S. 20-1(47). Suspension.--See recommended G.S. 20-1(36). Revocation or Suspension.

- - - - -

G.S. 20-1(48). Truck Tractors.--Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

COMMENTS

The recommended language is from present G.S. 20-38(37).

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G.S. 20-1(49). Vehicle.--Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the Driver of a vehicle except those which by their nature can have no application.

COMMENTS

The recommendation combines definitions in G.S. 20-6 "Vehicle and G.S. 20-38(38); the language is the substance of G.S. 20-38(38

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G.S. 20-1(50). Wreckers.--Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed.

COMMENTS

The recommended language is from present G.S. 20-38(39).

ARTICLE IB

Reciprocal Provisions as to Arrest of Nonresidents

New Sections

● G.S. 20-4.13. Definitions.-- Unless the context otherwise requires, the following words and phrases, for the purpose of this Article, shall mean:

- (a) State. - The State of North Carolina.
- (b) Reciprocating state. - Any state or other jurisdiction which extends by its laws to residents of North Carolina substantially the rights and privileges provided by this Article.
- (c) Citation. - Any citation, summons, ticket, or other document issued by a law enforcement officer for the violation of a traffic law, ordinance, rule or regulation.
- (d) License. - Any operator's or chauffeur's license or any other license, permit, or privilege to operate a motor vehicle.
- (e) Collateral or Bond. - Any cash or other security deposited to secure an appearance following a citation by a law enforcement officer.
- (f) Personal Recognizance. - A signed agreement by a nonresident that he will comply with the terms of the citation issued to him.
- (g) Nonresident. - A person who is a resident of or holds a license issued by a reciprocating state.

G.S. 20-4.14. Issuance of citation to nonresident; officer to report noncompliance. -- (a) Notwithstanding other provisions of this Chapter, a law enforcement officer observing a violation of this Chapter or other traffic regulation by a nonresident shall issue a citation as appropriate and shall not, subject to the provisions of paragraph (b) require such nonresident to post collateral or bond to secure appearance for trial, but shall accept such nonresident's personal recognizance; provided, however, that the nonresident shall have the right upon request to post collateral or bond in a manner provided by law and in such case the provisions of this Article shall not apply.

(b) No nonresident shall be entitled to be released on his personal recognizance if the offense is one which would result in the suspension or revocation of a person's license under the laws of this State.

(c) Upon the failure of the nonresident to comply with the citation, the law enforcement officer shall obtain a warrant for his arrest and shall report the noncompliance to the Department. The report of noncompliance shall clearly identify the nonresident; describe the violation, specifying the section of the statute, code or ordinance violated; indicate the location and date of offense; identify the vehicle involved; bear the signature of the law enforcement officer; and contain a copy of the personal recognizance signed by the nonresident.

G.S. 20-4.15. Department to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state.--(a) Upon receipt of a report of noncompliance, the Department shall transmit a certified copy of such report to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed.

(b) When the licensing authority of a reciprocating state reports that a person holding a North Carolina license has failed to comply with a citation issued in such state, the Commissioner shall forthwith suspend such person's license. The order of suspension shall indicate the reason for the order, and shall notify the person that his license shall remain suspended until he has furnished evidence satisfactory to the Commissioner that he has complied with the terms of the citation which was the basis for the suspension order by appearing before the tribunal to which he was cited and complying with any order entered by said tribunal.

(c) A copy of any suspension order issued hereunder shall be furnished to the licensing authority of the reciprocating state.

(d) The Commissioner shall maintain a current listing of reciprocating states hereunder. Such lists shall from time to time be disseminated among the appropriate departments, divisions, bureaus and agencies of this State; the principal law enforcement officers of the several counties, cities and towns of this State; and the licensing authorities in reciprocating states.

(e) The Commissioner shall have the authority to execute or make agreements, arrangements or declarations to carry out the provisions of this article.

COMMENTS

The committee recommends adoption of a non-resident violator compact which will remove the necessity of posting bond for non-residents cited for minor traffic violations. (Materials on the compact, including support from the Commissioner of Motor Vehicles, are contained in Appendix VIII.)

● G.S. 20-6. Definitions.--

~~Deleted.~~

COMMENTS

The Committee recommends repeal of present G.S. 20-6, and merger of the individual definitions into a new recommended G.S. 20-1.

G.S. 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.--(a) Any person who drives or operates a motor vehicle upon any highway or any public vehicular area shall be deemed to have given consent, subject to the provisions of G.S. 20-139.1, to a chemical test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or operating a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the request of a law-enforcement officer having reasonable grounds to believe the person to have been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor. The law-enforcement officer shall designate which of the aforesaid tests shall be administered. The person arrested shall forthwith be taken before a person authorized to administer a chemical test and this person shall inform the person arrested:

- (1) That he has a right to refuse to take the test;
- (2) That refusal to take the test will result in revocation of his driving privilege for 60 days;
- (3) That he may have a physician, qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer; and
- (4) That he may call an attorney and select a witness to view for him the testing procedures; but that the test shall not be delayed for this purpose for a period in excess of 30 minutes from the time he is notified of his rights.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section and the test or tests may be administered, subject to the provisions of G.S. 20-139.1.

(c) The arresting officer, in the presence of the person authorized to administer a chemical test, shall request that the person arrested submit to a test described in subsection (a). If the person arrested willfully refuses to submit to the chemical test designated by the arresting officer, none shall be given. However, upon the receipt of a sworn report of the arresting officer and the person authorized to administer a chemical test that the person arrested, after being advised of his rights as set forth in subsection (a), willfully refused to submit to the test upon the request of the officer, the Department shall

revoke the driving privilege of the person arrested for a period of 60 days.

(d) Upon receipt of the sworn report required by G.S. 20-16.2(c) the Department shall immediately notify the arrested person that his license to drive is revoked immediately unless said person requests in writing within three days of receipt of notice of revocation a hearing. If at least three days prior to hearing, the licensee shall so request of the hearing officer, the hearing officer shall subpoena the arresting officer and any other witnesses requested by the licensee to personally appear and give testimony at the hearing. If such person requests in writing a hearing, he shall retain his license until after the hearing. The hearing shall be conducted in the county where the arrest was made under the same conditions as hearings are conducted under the provisions of G.S. 20-16(d) except that the scope of such hearing for the purpose of this section shall cover the issues of whether the law-enforcement officer had reasonable ground to believe the person had been driving or operating a motor vehicle upon a highway or public vehicular area while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he willfully refused to submit to the test upon the request of the officer. Whether the person was informed that his privilege to drive would be revoked if he refused to submit to the test shall be an issue. The Department shall order that the revocation either be rescinded or sustained. If the revocation is sustained, the person shall surrender his license immediately upon notification unless said license shall have been returned to him under G.S. 20-16.2(c).

(e) If the revocation is sustained after such a hearing, the person whose driving privilege has been revoked, under the provisions of this section, shall have the right to file a petition in the superior court to review the action of the Department in the same manner and under the same conditions as is provided in G.S. 20-25.

(f) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been revoked, the Department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

(g) Deleted.7

COMMENTS

The last sentence of present subsection (a) would be replaced by the underlined material in recommended subsection (a). The new material specifically sets out four items that must be communicated to a person about to take the breathalyzer test; it includes the elements of the replaced sentence, and it additionally requires that the right to refuse the test and the consequences of refusal be related to the person. (The new material for subsection (a) would not be new rights, just required communication of rights presently advisable under G.S. 20-139.1.)

Present subsection (c) would be completely rewritten. The present provision for 60 day license suspension for test refusal would be retained, but changed to a separate offense. (The suspension would be enforced even if the person who refused the test were subsequently acquitted of driving under the influence charges.)

The committee recommends the addition in subsection (d); hearings to be held "in the county where the arrest was made." This addition would remove the problem of officers having to travel to the home county of defendants for the hearing, even though the arrest was made in a distant part of the State.

Present subsection (g), which defines public vehicular area for G.S. 20-16.2, has been deleted from the recommended G.S. 20-16.2. The committee recommends that "public vehicular area" be defined in a new Chapter-wide definition section, to become G.S. 20-1(32).

G.S. 20-17. Mandatory revocation of license by Department.--
The Department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Homicide by vehicle as defined in G.S. 20-141.4.
- (3) Driving or operating a vehicle within this State while under the influence of intoxicating liquor or while under the influence of an impairing drug as defined in G.S. 20-19(h).
- (4) Any felony in the commission of which a motor vehicle is used.
- (5) Failure to stop and render aid as required under the laws of this State in the event of a motor vehicle accident.
- (6) Perjury or the making of a false affidavit or statement under oath to the Department under this Article or under any other law relating to the ownership of motor vehicles.
- (7) Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving committed within a period of 12 months.
- (8) Conviction, or forfeiture of bail not vacated, upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.
- (9) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7.)
- (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j) or (k).

COMMENTS

The committee recommends adoption of new subdivisions (2) and (10), to be added to the present G.S. 20-17. New subdivision (2) would require mandatory license revocation for violation of a new recommended Vehicular Homicide section, to become G.S. 20-141.4. New subdivision (10) would require revocation for violation of new recommended speed provisions, to become G.S. 20-141 (j) and (k). The present subdivisions of G.S. 20-17 would have to be renumbered appropriately.

G.S. 20-38. Definitions of Words and Phrases.--

[Deleted.]

COMMENTS

The Committee recommends repeal of present G.S. 20-38, and merger of the individual definitions into a new recommended G.S. 20-1.

G.S. 20-116. Size of vehicles and loads.-(a) The total outside width of any vehicle or the load thereon shall not exceed...

* * * * *

(i) Deleted.

COMMENTS

Since the subject matter is no longer used, the Committee recommends repeal of this provision dealing with trackless trolleys in the city of Greensboro. The Committee also recommends repeal of G.S. 20-159 which deals with streetcars.

Present G.S. 20-116(i) is carried below.

G.S. 20-116 (i) The total width of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the city of Greensboro and vicinity, shall not exceed 102 inches, and the total length, inclusive of front and rear bumpers, of any such vehicle shall not exceed 36 feet, and the height of any such vehicle, exclusive of trolley pole for operating same, shall not exceed 12 feet, six inches.

G.S. 20-124. Brakes. -

* * * * *

(b) Deleted.

COMMENTS

The Committee recommends repeal of present subsection (b), since it is duplicated in recommended G.S. 20-163. The remaining subsections of present G.S. 20-124 would be appropriately renumbered.

Present G.S. 20-124 (b) is carried below.

§ 20-124. Brakes.—(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the parking brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

G.S. 20-129. Required lighting equipment of vehicles.

* * * * *

(c) Head Lamps on Motorcycles. - Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations set forth in G.S. 20-131 or G.S. 20-132. The head lamps on a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas.

(d) Rear Lamps. - Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semi-trailer . . .

* * * * *

The rear lamps of a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas.

* * * * *

COMMENTS

A new sentence would be added to present subsection (c) requiring motorcycle headlights to be lighted at all times. It is thought that requiring lights during daylight hours will reduce accidents which are now caused by automobile operators not seeing motorcycles.

A new paragraph would be added to present subsection (d) requiring motorcycle taillights to be lighted at all times. The reasoning is the same as for subsection (c).

G.S. 20-140. Reckless driving. - (a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

(c) Any person convicted of reckless driving shall be punished by imprisonment not to exceed six months or by a fine, not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court.

Rewritten

COMMENTS

The committee recommends combining present G.S. 20-140 and G.S. 20-140.1. The substance of present G.S. 20-140 would be retained, with the addition of "or any public vehicular area" to replace present G.S. 20-140.1; present G.S. 20-140.1 would be repealed. Recommended G.S. 20-1 (32) defines "public vehicular area."

Present G.S. 140.1 is carried below.

§ 20-140.1. Reckless driving upon driveways of public or private institutions, establishments providing parking space, etc.—Any person who shall operate a motor vehicle over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public, carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving and upon conviction shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court. (1951, c. 182, s. 1; 1955, c. 917; 1957, c. 1368, s. 2.)

G.S. 20-140.1. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways it shall be unlawful for any person:

Section Rewritten

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
- (4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right of way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.

COMMENTS

The Committee recommends combining present G.S. 136-89.58 and a paragraph from UVC 11-312, to become a new G.S. 20-140.1.

△The Committee recommends that present G.S. 20-140.1 be eliminated and combined with present G.S. 20-140.7

G.S. 20-140.2. Overloaded or overcrowded vehicle.

No person shall operate upon a highway or public vehicular area a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway or public vehicular area, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.

COMMENTS

The Committee recommends the addition of "public vehicular area" to the coverage of present subsection (a), and deletion of the subsection designation. ∟The term is defined in recommended G.S. 20-1(32).∟

The substance of present subsection (b) would be moved to a new G.S. 20-140.3.

Present subsection (c) would be deleted so that the general penalty section, recommended G.S. 20-186, would apply.

∟The present G.S. 20-140.2 is carried below for comparison.∟

§ 20-140.2. Overloaded or overcrowded vehicle; persons riding on motorcycles to wear safety helmets.—(a) No person shall operate upon a highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.

(b) No motorcycle shall be operated upon the streets and highways of this State unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles. No person shall operate a motorcycle upon the streets and highways of this State when the number of persons upon such motorcycle, including the operator, shall exceed the number of persons for which it was designed to carry. Violation of any provision of this subsection shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in § 20-176. (1953, c. 1233; 1967, c. 674, s. 1.)

G.S. 20-140.3. Special provisions for motorcycles.

(a) No person shall operate a motorcycle upon a highway or public vehicular area:

- (1) When the number of persons upon such motorcycle, including the operator, shall exceed the number of persons which it was designed to carry.
- (2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles.
- (3) Unless the operator wears a shatterproof eye-protective device of a type approved by the Commissioner of Motor Vehicles, except that no eye-protectors are required when the motorcycle is equipped with a windscreen of a type approved by the Commissioner.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

COMMENTS

The Committee recommends a new G.S. 20-140.3 to reflect the substance of present G.S. 20-140.2(b). An additional element is recommended for Subsection (3) of G.S. 20-140.3(a) which will require the use of eye protective devices.

Recommended new Subsection (b) is from present G.S. 20-140.2(b).

The general penalty section, recommended G.S. 20-176, would apply.

The present G.S. 20-140.2 is carried in the comments for recommended G.S. 20-140.2; recommended G.S. 20-129 also has provisions dealing with motorcycles.

G.S. 20-141. Speed restrictions.

Section Rewritten

(a) No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.
- (2) Forty-five miles per hour outside municipal corporate limits for trucks of over one-ton capacity and all vehicles which are towing, drawing or pushing another vehicle with a gross weight of more than three thousand pounds.
- (3) Fifty-five miles per hour outside municipal corporate limits for all other vehicles, except school buses and school activity buses.

(c) Except while towing another vehicle, or when an advisory safe speed sign indicates a slower speed, or as otherwise provided by law, it shall be unlawful to operate a passenger vehicle upon the interstate and primary highway system at less than the following speeds:

- (1) Forty miles per hour in a speed zone of 55 miles per hour.
- (2) Forty-five miles per hour in a speed zone of 60 miles per hour or greater.

These minimum speeds shall be effective only when appropriate signs are posted indicating the minimum speed.

(d) Whenever the State Highway Commission determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed allowed by this section is greater than is reasonable and safe, under the

conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality), the Commission shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour and is not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(e) Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State Highway System; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected.

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State Highway System (except those highways designated as part of the Interstate Highway System or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the State Highway Commission has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

(g) Whenever the State Highway Commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Commission or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective

when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the State Highway Commission and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The State Highway Commission shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Any person convicted of violating this section by operating a vehicle on a street or highway in excess of 55 miles per hour and at least 15 miles per hour over the legal limit shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisonment for not more than two years, or both, in the discretion of the court.

(k) Any person convicted of violating this section by operating a vehicle on a street or highway in excess of 55 miles per hour and at least 15 miles per hour over the legal limit while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00), or imprisonment for not more than two years, or both, in the discretion of the court. Proof of the identity of the registered owner of a vehicle used in violation of this subsection shall constitute prima facie evidence that such registered owner was driving the vehicle at the time of the offense.

COMMENTS

The Committee recommends that present G.S. 20-141 be completely rewritten; present G.S. 20-141.1 and G.S. 20-180 would be repealed and their substance would be included in recommended G.S. 20-141. The present G.S. 20-141 and G.S. 20-180 are carried at the end of the comments.

In subsection (a), "public vehicular area" would be substituted for the lengthy list of parking lots, etc.; the term is defined in recommended G.S. 20-1(32).

In subsection (b), business and residential district distinctions would be eliminated in favor of limits based on city limits; recommended subsections (d), (e) and (f) would contain provisions relating to posting signs with limits different from those in recommended subsection (b).

The substance of the minimum speed provisions of present subsection (b1) would be rewritten and set out in recommended subsection (c).

The substance of present subsections (b5) and (d), Highway Commission power to set speed limits up to 70 M.P.H., would be rewritten and set out in recommended subsection (d).

The substance of present subsections (f1), (g), (g1), (g2) and (g3), local authority to set speed limits, would be set out in recommended subsections (e) and (f).

Present subsection (h1), posting minimum speeds by Highway Commission or local authorities, would be set out in recommended subsection (g).

Present subsections (h) and (i), general slow speed restriction and Highway Commission authority to mark truck routes, would retain their old subsection designations and become recommended subsections (h) and (i).

Present subsection (j) would be deleted so that the general penalty provision of recommended G.S. 20-176 would apply to all but the subsections that carry their own penalty, recommended subsection (j) and (k).

The Committee recommends adoption of a new subsection (j), which would provide a stiff penalty for speeding over 55 M.P.H. and 15 M.P.H. over the limit. The Committee also recommends adoption of a new subsection (k), which would provide an even stiffer penalty for violation of the subsection (j) prohibition while the violator is fleeing arrest. Recommended subsection (k) also provides for a prima facie case against the registered owner of a vehicle used in violation.

∟Present G.S. 20-141 and G.S. 20-180 are carried below.∟

§ 20-141. Speed restrictions.—(a) No person shall drive a vehicle on a highway or on any parking lot, drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, benevolent institution, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for:
 - a. All vehicles other than passenger cars, regular passenger vehicles, pick-up trucks of less than one-ton capacity, and school busses loaded with children; and
 - b. All vehicles, of whatever kind, which are engaged in towing, drawing, or pushing another vehicle: Provided, this subdivision shall not apply to vehicles engaged in towing, drawing, or pushing trailers with a gross weight of not more than 3000 pounds;

(4) Fifty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for passenger cars, regular passenger carrying vehicles, and pick-up trucks of less than one-ton capacity.

(5) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subdivisions (1), (2), (3) and (4) of this subsection is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality, or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, with respect to the vehicles described in said subdivisions (3) and (4), said Commission shall determine and declare a reasonable and safe speed limit, not to exceed a maximum of 70 miles per hour, with respect to said part of any such highway, which maximum speed limit with respect to subdivisions (1), (2), (3) and (4) of this subsection shall be effective when appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(b1) Except as otherwise provided in this Chapter, and except while towing another vehicle, and except when an advisory safe speed sign indicates a slower speed, it shall be unlawful to operate a passenger vehicle or pick-up truck, rated for a capacity of not more than three-fourths ton, upon the interstate and primary highway system at less than the following speeds:

- (1) Forty miles per hour in a 55 mile-per-hour zone;
- (2) Forty-five miles per hour in a 60 mile-per-hour zone; and
- (3) : Repealed by Session Laws 1971, c. 79, s. 2.

It shall be a specific duty of the State Highway Patrol and such Patrol is here-

by directed to enforce the minimum speeds established hereby, when appropriate signs are posted indicating the minimum speed, provided that this mandate shall not be construed to divest other local authorized law-enforcement officers of authority to enforce minimum speeds established hereby.

In all civil actions, violations of this subsection relating to minimum speeds shall not constitute negligence per se.

(c) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway, and to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care.

(d) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, said Commission shall determine and declare a reasonable and safe speed limit thereat, which shall be effective when appropriate signs giving notice thereof are erected at such place or part of the highway.

(e) The foregoing provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident: Provided, that the failure or inability of a motor vehicle operator who is operating such vehicle within the maximum speed limits prescribed by G.S. 20-141(b) to stop such vehicle within the radius of the lights thereof or within the range of his vision shall not be considered negligence per se or contributory negligence per se in any civil action, but the facts relating thereto may be considered with other facts in such action in determining the negligence or contributory negligence of such operator.

(f) Repealed by Session Laws 1963, c. 949.

(f1) Local authorities in their respective jurisdictions may in their discretion fix by ordinance such speed limits as they may deem safe and proper on those streets which are not a part of the State highway system and which are not maintained by the State Highway Commission, but no speed limit so fixed for such streets shall be less than 25 miles per hour, and no such ordinance shall become or remain effective unless signs have been conspicuously placed giving notice of the speed limit for such streets. A violation of any ordinance adopted pursuant to the provisions of this subsection shall constitute a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or a prison sentence of not more than 30 days.

(g) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher speeds than those stated in subsection (b) hereof upon streets which are not a part of the State highway system and which are not maintained by the State Highway Commission or portions thereof where there are no intersections or between widely spaced intersections: Provided, that signs are erected giving notice of the authorized speed.

Local authorities shall not have the authority to modify or alter the basic rules set forth in subsection (a) herein, nor in any event to authorize by ordinance a speed in excess of 50 miles per hour.

(g1) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subdivisions (1), (2), and (3) of subsection (b) hereof is reasonable and safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authorities shall determine and declare a safe and reasonable speed limit, not to exceed a maximum of 50 miles per hour; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limit.

(g2) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authority shall determine and declare a safe and reasonable speed limit; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limits; provided, further, however, that nothing in this subsection shall prohibit local authorities from setting lower speed limits in school zones under the authority of subsection (g3) hereof.

(g3) Whenever a municipal governing body determines upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than reasonable or safe under the conditions found to exist upon any street or highway within its corporate limits which is a part of a State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, and is located in the vicinity of any public or private elementary or secondary school, it shall have authority to reduce by ordinance the speed limit upon such streets and highways abutting school property and for a distance not to exceed 500 feet on either side of such school property lines to a maximum speed of not less than 25 miles per hour, such speed limit to be effective only for 30 minutes prior to and 30 minutes following the times when such school begins and ends its daily schedule; provided, that in the event of a school having different beginning and ending schedules for different groups of pupils, such speed limit may be effective for 30 minutes prior to and 30 minutes following the time of each beginning schedule and each ending schedule; and provided, further, that no speed limit fixed under authority of this subsection shall be effective unless appropriate signs are erected giving notice of the authorized speed limit.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation because of mechanical failure or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h1) Whenever the State Highway Commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Commission or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation because of me-

chanical failure or in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the State Highway Commission and the local authorities. The provision of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h2): Struck out by Session Laws 1961, c. 1147.

(i) The State Highway Commission shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as provided in G.S. 20-180. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3.)

§ 20-180. Penalty for speeding.—Every person convicted of violating G.S. 20-141 shall be guilty of a misdemeanor, and shall be punished as prescribed in G.S. 20-176 (b), except that any person convicted of violating G.S. 20-141 by operating a motor vehicle on a public street or highway in excess of eighty (80) miles per hour shall be punished by a fine of not less than fifty dollars (\$50.00), or imprisonment of not more than two years, or by both such fine and imprisonment, in the discretion of the court. (1937, c. 407, s. 141; 1947, c. 1067, s. 19; 1951, c. 182, s. 2; 1957, c. 1368, s. 2½; 1959, c. 913.)

G.S. 20-141.1 Restrictions in speed zones near schools.

[Deleted]

COMMENTS

The committee recommends repeal of this section; the substance of the present G.S. 20-141.1 would be included in recommended G.A. 20-141.

[Present G.S. 20-141.1 is carried below.]

§ 20-141.1. Restrictions in speed zones near rural public schools.— Whenever the State Highway Commission shall determine that the proximity of a public school to a public highway, coupled with the number of pupils in ordinary regular attendance at such school, results in a situation that renders the applicable speed set out in G.S. 20-141 greater than is reasonable or safe, under the conditions found to exist with respect to any public highway near such school, said Commission shall establish a speed zone on such portion of said public highway near such school as it deems necessary, and determine and declare a reasonable and safe speed limit for such speed zone, which shall be effective when appropriate signs giving notice thereof are erected at each end of said zone so as to give notice to any one entering the zone. This section does not apply with respect to any portion of any street or highway within the corporate limits of any incorporated city or town. Operation of a motor vehicle in any such zone at a rate of speed in excess of that fixed pursuant to the powers granted in this section is a misdemeanor punishable by fine or imprisonment not to exceed two years, or both, in the discretion of the court. (1951, c. 782; 1957, c. 65, s. 11; 1967, c. 448.)

G.S. 20-141.3. Unlawful racing on streets and highways.

* * * * *

(g) When any officer of the law discovers that any person has operated or is operating a motor vehicle wilfully in pre-arranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle wilfully in pre-arranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.

Notwithstanding the provisions for sale set out above, on petition by a lienholder the court, in its discretion and upon such terms and conditions as it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor

vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within ten (10) days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit to be used in the performance of official duties only, and not for resale, transfer or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lien holders and other claimants to said vehicles as set out in this section.

COMMENTS

The Committee recommends a new paragraph providing that a lienholder has a right to petition for reclamation of a seized car rather than just a right to share in the proceeds of a public sale.

G.S. 20-141.4. Homicide by Vehicle.

(a) Whoever shall unlawfully and unintentionally cause the death of another person while engaged in the violation of any state law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic shall be guilty of homicide by vehicle when such violation is the proximate cause of said death.

(b) Any person convicted of homicide by vehicle shall be fined not less than \$500.00 not more than \$2000.00, or shall be imprisoned for not more than five years, or both, in the discretion of the court.

COMMENTS

The Committee recommends adoption of a new section establishing "Vehicular Homicide" as a Chapter 20 violation. The language would be from UVC 11-903. A stiff penalty provision would be included as subsection (b). The new section would supplement, rather than replace, the present law concerning automobile manslaughter.

New Section

Section Rewritten 1

G.S. 20-142. Railroad warning signals must be obeyed. Whenever any person driving a vehicle approaches a railway grade crossing, and any signal given by a mechanical or electrical device, gate, or flagman indicates the approach of a train or railroad car, it shall be unlawful for the driver to fail to bring the vehicle to a complete stop and ascertain that further movement can be made in safety before traversing such grade crossing.

COMMENTS

The committee recommends that the present section be rewritten and obsolete language would be eliminated.

Present G.S. 20-142 is carried below for comparison.

§ 20-142. Railroad warning signals must be obeyed.—Whenever any person driving a vehicle approaches a highway and interurban or steam railway grade crossing, and a clearly visible and positive signal gives warning of the immediate approach of a railway train or car, it shall be unlawful for the driver of the vehicle to fail to bring the vehicle to a complete stop before traversing such grade crossing. (1937, c. 407, s. 104.)

G.S. 20-143. Vehicles must stop at certain railway grade crossings. The State Highway Commission or local authorities are hereby authorized to designate dangerous railroad grade crossings and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within 50 feet but not less than 10 feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

COMMENTS

The committee recommends that the language of the present section be deleted and replaced by that of UVC 11-702.

Present G.S. 20-143 is carried below for comparison.

§ 20-143. Vehicles must stop at certain railway grade crossings.—The road governing body (whether State or county) is hereby authorized to designate grade crossings of steam or interurban railways by State and county highways, at which vehicles are required to stop, respectively, and such railways are required to erect signs thereat notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway tracks, and whenever any such crossing is so designated and sign-posted it shall be unlawful for the driver of any vehicle to fail to stop within fifty feet, but not closer than ten feet, from such railway tracks before traversing such crossing. No failure so to stop, however, shall be considered contributory negligence per se in any action against the railroad or interurban company for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff was guilty of contributory negligence. (1937, c. 407, s. 105; 1969, c. 1231, s. 1.)

Section Rewritten 1

G.S. 20-143.1. Certain vehicles must stop at railroad grade crossing.---

* * * * *

- (b) The provisions of this section shall not require the driver of a vehicle to stop:
- (1) At railroad tracks used exclusively for industrial switching purposes within a business district. *As defined in G.S. 20-38(1)*
 - (2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.
 - (3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when such gate or flashing signal does not indicate the approach of a train.
 - (4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.
 - (5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt Crossing," which sign has been erected by or with the consent of the appropriate State or local authority.

* * * * *

(d) It shall be unlawful to transport by motor vehicle upon the highways of this State any dangerous article without conspicuously marking or placarding such motor vehicle on each side and on the rear thereof with the word "DANGEROUS" or the common or generic name of the article transported or its principal hazard. Additionally, the rear of every such vehicle shall be conspicuously marked with the words "THIS VEHICLE STOPS AT ~~ALL~~ RAILROAD CROSSINGS."

* * * * *

COMMENTS

The Committee recommends deletion of the word "ALL" from the last sentence of present G.S. 20-143.1(d) and from the catchline. Commissioner Garrett suggests that this will be an improvement since present subsection (b) specifies that vehicles do not have to stop at ALL railroad crossings.

A section reference would be deleted in recommended G.S. 20-143.1(b)(1).

G.S. 146. Drive on right side of highway. exceptions.--(a)

Upon all highways of sufficient width a vehicle shall be driven upon the right half of the highway except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
- (3) Upon a highway divided into three marked lanes for traffic under the rules applicable thereon; or
- (4) Upon a highway designated and signposted for one-way traffic.

(b) Upon all highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any highway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the highway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a) (2) hereof.

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

- (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- (2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in the preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.
- (3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the direction of every such device.

- (4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets and drivers of vehicles shall obey the directions of every such device.

COMMENTS

The Committee recommends that every time the words "roadway" or "roadways" appear in G.S. 20-146, they be changed to read "highway" or "highways".

G. S. 20-146(b) would be revised by striking "normal speed of traffic at the time and place and under the conditions then existing", and substituting "legal maximum speed limit".

A new subsection (d) would be added to deal with streets divided in two or more lanes; part of the recommended language is suggested by UVC 11-309.

G.S. 20-146.1. Operation of motorcycles.--It shall be unlawful for persons operating motorcycles upon the public highways of the State of North Carolina to travel thereon more than two abreast.

Any persons operating motorcycles upon the public highways shall operate the same as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

COMMENTS

The Committee recommends that the last paragraph of the present section, a \$50 or 30 days penalty provision, be repealed. Punishment would be covered by the general penalty section, recommended G.S. 20-176.

G.S. 20-149. Overtaking a vehicle. - (a) The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

COMMENTS

The Committee recommends that present subsection (b) be amended to eliminate the mandatory audible warning when a driver is overtaking another vehicle. The recommended language is from UVC 11-303. Reference to business or residence district would be eliminated.

Present subsection (a) would remain unchanged.

Present G.S. 20-149(b) is carried below for comparison.

G.S. 20-149

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction, but his failure to do so shall not constitute negligence or contributory negligence per se in any civil action; although the same may be considered with the other facts in the case in determining whether the driver of the overtaking vehicle was guilty of negligence or contributory negligence. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247.)

G.S. 20-150. Limitations on privilege of overtaking and passing. -

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(f) The foregoing limitations shall not apply upon a one-way street nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

COMMENTS

The Committee recommends addition of a new subsection (f); the language is from UVC 11-306.

G.S. 20-152. Following too closely. -

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle traveling upon a highway outside of a business or residential district and following another motor vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor vehicle from overtaking and passing another motor vehicle. This provision shall not apply to funeral processions.

COMMENTS

The Committee recommends replacing the language of present G.S. 20-152 with that of UVC 11-310.

∟Present G.S. 20-152 is carried below for comparison.∟

§ 20-152. Following too closely. - (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when travelling upon a highway outside of a business or residence district, shall not follow another motor truck within three hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114; 1949, c. 1207, s. 4.)

Subsection Rewritten

G.S. 20-149. Overtaking a vehicle. - (a) The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G.S. 20-150.1.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

COMMENTS

The Committee recommends that present subsection (b) be amended to eliminate the mandatory audible warning when a driver is overtaking another vehicle. The recommended language is from UVC 11-303. Reference to business or residence district would be eliminated.

Present subsection (a) would remain unchanged.

Present G.S. 20-149(b) is carried below for comparison.

G.S. 20-149

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction, but his failure to do so shall not constitute negligence or contributory negligence per se in any civil action; although the same may be considered with the other facts in the case in determining whether the driver of the overtaking vehicle was guilty of negligence or contributory negligence. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247.)

G.S. 20-150. Limitations on privilege of overtaking and passing.

* * * * *

New Subsection

(f) The foregoing limitations shall not apply upon a one-way street nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

COMMENTS

The Committee recommends addition of a new subsection (f); the language is from UVC 11-306.

G.S. 20-152. Following too closely. -

Section Rewritten

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle traveling upon a highway outside of a business or residential district and following another motor vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor vehicle from overtaking and passing another motor vehicle. This provision shall not apply to funeral processions.

COMMENTS

The Committee recommends replacing the language of present G.S. 20-152 with that of UVC 11-310.

Present G.S. 20-152 is carried below for comparison.

§ 20-152. Following too closely. - (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when travelling upon a highway outside of a business or residence district, shall not follow another motor truck within three hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114; 1949, c. 1207, s. 4.)

G.S. 20-153. Turning at intersections. -

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Local authorities and the State Highway Commission, in their respective jurisdictions, may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed when such direction signs are authorized by local authorities.

COMMENTS

The Committee recommends that present subsections (a) and (b) be rewritten with the language of UVC 11-601.

Recommended subsection (c) would be a modification of present G.S. 20-153(c), with the addition of Highway Commission authority.

[Present G.S. 20-153 is carried below for comparison.]

§ 20-153. Turning at intersection.—(a) Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the right-hand side of the highway, and in turning shall keep as closely as practicable to the right-hand curb or edge of the highway, and when intending to turn to the left shall approach such intersection in the lane for the traffic to the right of and nearest to the center of the highway, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. When a vehicle is being operated on a three-lane street or highway, the driver thereof intending to turn to the left at an intersection shall approach the intersection in the lane nearest to the center of the highway and designated for use by vehicles traveling in the same direction as the vehicle about to turn.

(b) For the purpose of this section, the center of the intersection shall mean the meeting point of the medial lines of the highways intersecting one another.

(c) Local authorities in their respective jurisdiction may modify the foregoing method of turning at intersections by clearly indicating by buttons, markers or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed when such direction signs are authorized by local authorities. (1937, c. 407, s. 115; 1955, c. 913, s. 5.)

G.S. 20-154. Signals on starting, stopping or turning.-

(a) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Department, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Department.

* * * * *

COMMENTS

The Committee recommends that an additional sentence be added to present subsection (a) to deal with backing a vehicle.

Also, the Committee recommends that the following wording be deleted from subsection (b) as surplusage:

"Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State."

G.S. 20-155. Right-of-way. -

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

* * * * *

COMMENTS

The committee recommends that the language of present subsections (a) and (b) be deleted and replaced by that of UVC 11-401 and 11-402.

Present subsections (c) and (d) would be retained in recommended G.S. 20-155.

Present G.S. 20-155 is carried below for comparison.

§ 20-155. Right of way.—(a) When two vehicles approach or enter an intersection and/or junction at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right except as otherwise provided in § 20-156 and except where the vehicle on the right is required to stop by a sign erected pursuant to the provisions of § 20-158 and except where the vehicle on the right is required to yield the right-of-way by a sign erected pursuant to the provisions of § 20-158.1.

(b) The driver of a vehicle approaching but not having entered an intersection and/or junction, shall yield the right-of-way to a vehicle already within such intersection and/or junction whether the vehicle in the junction is proceeding straight ahead or turning in either direction: Provided, that this subsection shall not be interpreted as giving the right-of-way to a vehicle already in an intersection and/or junction when said vehicle is turning either to the right or left unless the driver of said vehicle has given a plainly visible signal of intention to turn as required in § 20-154. Notwithstanding the provisions of this section and § 20-154, a vehicle making a left turn in front of an approaching vehicle does not have the right-of-way unless such movement can be completed with safety prior to the arrival of the approaching vehicle, and when the movement cannot be completed with safety, the driver of the vehicle making the left turn shall yield the right-of-way.

(c) The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing such highway within any clearly marked cross-walk, or any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block, except at intersections where the movement of traffic is being regulated by traffic officers or traffic direction devices.

(d) The driver of any vehicle approaching but not having entered a traffic circle shall yield the right-of-way to a vehicle already within such traffic circle. (1937, c. 407, s. 117; 1949, c. 1016, s. 2; 1955, c. 913, ss. 6, 7; 1967, c. 1053.)

New Subsection

G.S. 20-156. Exceptions to the right-of-way rule. -

(a) The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right of way to all vehicles approaching on the highway to be entered

* * * * *

COMMENTS

The committee recommends that the language of present subsection (a) be deleted and replaced by that of UVC 11-404.

Present subsection (b) would be retained.

[Present G.S. 20-156 is carried below for comparison.]

§ 20-156. Exceptions to the right-of-way rule.—(a) The driver of a vehicle entering a public highway from a private road or drive shall yield the right-of-way to all vehicles approaching on such public highway.

(b) The driver of a vehicle upon a highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances and rescue squad emergency service vehicles when the latter are operated upon official business and the drivers thereof giving warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than one thousand feet. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118; 1971, cc. 78, 106.)

Section Rewritten

Subsections Rewritten

SECTION REWRITTEN

G.S. 20-158. Vehicle control signs and signals.- (a) The State Highway Commission, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to control vehicles:

- (1) At intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop at the entrance to that portion of the intersection designated as the main traveled or through highway.
 - (2) At appropriate places other than intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop.
 - (3) At intersections and other appropriate places, by erecting or installing steady beam stop lights and other traffic control devices, signs or signals. All steady beam stop lights emitting alternate red and green lights shall be arranged so that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.
 - (4) At intersections and other appropriate places, by erecting or installing flashing red or yellow lights.
- (b) Control of vehicles at intersections.
- (1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main traveled or through highway.
 - (2) When a stop light has been erected or installed at an intersection, and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the stop light is emitting a steady yellow light, vehicles facing the yellow light shall be warned that a red light will be immediately forthcoming and that vehicles may not enter the intersection on such a red light. When the stop light is emitting a steady green light, vehicles may proceed through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

- (3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.
- (4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.
- (5) When a stop sign, stop light, flashing light, or other traffic control device authorized by subsection (a) requires a vehicle to stop at an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked cross walk, or if none, before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(c) Control of vehicles at places other than intersections.

- (1) When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians and other vehicles.
- (2) When a stop light has been erected or installed at a place other than an intersection, and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the stop light is emitting a steady yellow light, vehicles facing the light shall be warned that a red light will be immediately forthcoming and that vehicles may not proceed through such a red light. When the stop light is emitting a steady green light, vehicles may proceed subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

- (3) When a flashing red light has been erected or installed at a place other than an intersection, approaching vehicles facing the light shall stop and yield the right-of-way to pedestrians or other vehicles.
- (4) When a flashing yellow light has been erected or installed at a place other than an intersection, approaching vehicles facing the light may proceed with caution, yielding the right-of-way to pedestrians and other vehicles.
- (5) When a stop light, stop sign or other signaling device authorized by subsection (a) requires a vehicle to stop at a place other than an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked cross walk, or if none, before proceeding past the signaling device.

(d) No failure to stop as required by the provisions of this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence.

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COMMENTS

The committee recommends that the section be completely re-written. The new recommended G.S. 20-158 would be a comprehensive treatment of stop signs, stop lights and flashing lights at intersections and other appropriate places.

The recommendation covers the jurisdictions of both the Highway Commission and local authorities; present G.S. 20-158 deals on with Highway Commission jurisdiction.

Part of the recommended language is suggested by UVC 11-202.

Present G.S. 20-158 is carried below for comparison.

§ 20-158. Vehicles must stop and yield right-of-way at certain through highways.—(a) The State Highway Commission, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to designate main traveled or through highways by erecting at the entrance thereto from intersecting highways signs notifying drivers of vehicles to come to full stop before entering or crossing such designated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main traveled or through highway and approaching said intersection. No failure so to stop, however, shall be considered contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff in such action was guilty of contributory negligence.

(b) This section shall not interfere with the regulations prescribed by towns and cities.

(c) When a stop light has been erected or installed at any intersection in this State outside of the corporate limits of a municipality, no operator of a vehicle approaching said intersection shall enter the same with said vehicle while the stop light is emitting a red light or stop signal for traffic moving on the highway and in the direction that said approaching vehicle is traveling. All such stop lights emitting alternate red and green lights shall be so arranged and placed that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.

(d) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days. (1937, c. 407, s. 120, 1941 c. 83; 1949, c. 583, s. 2; 1955, c. 384, s. 1; c. 913, s. 7; 1957, c. 65, s. 11.)

G.S. 20-158.1. Erection of "yield right-of-way"
signs.

[Last sentence deleted]

COMMENTS

The Committee recommends that the last sentence of this section be repealed. The penalty provision in G. S. 20-176(b) will apply.

G.S. 20-159. Passing Streetcars.

[Deleted]

COMMENTS

The committee recommends repeal of the section since there are no longer any streetcars in the State.

[A similar provision dealing with trolleys, present G.S. 20-116 (i), would also be repealed.]

G.S. 20-160. Driving through safety zone or on sidewalks prohibited.

(a) The driver of a vehicle shall not at any time drive through or over a safety zone.

(b) No person shall drive any motor vehicle upon a sidewalk or sidewalk area except upon a permanent or temporary driveway.

COMMENTS

The committee recommends that the substance of present section G.S. 20-160 be designated subsection (a), and that the final phrase "as defined in part one of this article" be deleted. [Recommended G.S. 20-1 (39) would define "safety zone" in any part of Chapter 20.]

The committee also recommends addition of a new subsection (b) to prohibit driving a vehicle on sidewalks.

G.S. 20-161. Parking on highway prohibited; warning signals; removal of vehicles from highway. - (a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge.

(b) No person shall park or leave standing any vehicle upon the shoulder of a highway outside municipal corporate limits unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

* * * * *

(d) The owner of any vehicle parked or left standing in violation of law shall be deemed to have appointed any investigating law enforcement officer his agent:

- (1) for the purpose of removing the vehicle to the shoulder of the highway or to some other suitable place; and
- (2) for the purpose of arranging for the transportation and safe storage of such vehicle, in which case the officer shall be deemed a legal possessor of the vehicle within the meaning of G.S. 44A-2(d).

(e) Deleted

COMMENTS

The Committee recommends that the qualification "outside municipal corporate limits" be added to present subsections (a) and (b), and that "in violation of the law" be added to present subsection (d). Present subsection (c) would be retained without change.

The Committee also recommends that part of present subsection (e) be incorporated into a rewritten subsection (d).

Present subsections (d) and (e) are carried below for comparison.

New Subdivisions

SECTION REVISION

§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.—

(d) The owner of any vehicle parked or left standing wholly or partially upon the paved or main traveled portion of a public highway or highway bridge shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of removing the vehicle to the shoulder of the highway when the removal is, in the judgment of the officer, practicable and consistent with subsection (b) above.

(e) When any vehicle is parked or left standing upon the right-of-way of a public highway for a period of 48 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d). (1937, c. 407, s. 123; 1951, c. 1165, s. 1; 1971, c. 294, s. 1.)

G.S. 20-162.2. Removal of unauthorized vehicles from private lots.

G.S. 20-162.3. Removal of unauthorized vehicles from service stations.

COMMENTS

See the explanation in the comments for recommended G.S. 20-219.1 and G.S. 20-219.2.

G.S. 20-163. Unattended motor vehicles.

- No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

COMMENTS

The Committee recommends substantial revision of the present section. The new language is from UVC 11-1101.

The Committee also recommends that present G.S. 20-124(b) be deleted as a duplication.

Present G.S. 20-163 is carried below for comparison.

§ 20-163. Motor vehicle left unattended; brakes to be set and engine stopped.—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle, and, when standing upon any grade, without turning the front wheels of such vehicle to the curb or side of the highway. (1937, c. 407, s. 125.)

G.S. 20-164. Driving on mountain highways.

Deleted.

COMMENTS

The Committee recommends repeal of present G.S. 20-164, since it is unnecessary.

Present G.S. 20-164 is carried below.

§ 20-164. Driving on mountain highways.—The driver of a motor vehicle traversing defiles, canyons or mountain highways shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible, and upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with a horn or other warning device. (1937, c. 407, s. 126.)

G.S. 20-165. Coasting prohibited. The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral, or with the clutch disengaged.

COMMENTS

The Committee recommends replacing the present language with that of UVC 11-1108.

Present G.S. 20-165 is carried below for comparison.

§ 20-165. Coasting prohibited.—The driver of a motor vehicle when traveling upon a down grade upon any highway shall not coast with the gears of such vehicle in neutral. (1937, c. 407, s. 127.)

G.S. 20-165.1. One-way traffic.—In all cases where the State Highway Commission has heretofore, or may hereafter lawfully designate any highway or other separate roadway, under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof, it shall be unlawful for any person to willfully drive or operate any vehicle on said highway or roadway except in the direction so indicated by said signs.

COMMENTS

The Committee recommends repeal of the last sentence of present G.S. 20-165.1, a \$50 or 30 days penalty provision; recommended G.S. 20-176, the general penalty provision, would apply.

G.S. 20-166.1 Reports and investigations required in event of collision.

* * * * *

(f) Every person holding the office of medical examiner in this State shall report to the Department the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the medical examiner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

* * * * *

(h) The Department shall prepare and shall upon request supply to police, medical examiners, sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Department.

(i) All collision reports, . . .
The reports made by State, city, or county police, and medical examiners but no other reports required under this section shall be subject to the inspection of members of the general public at all reasonable times, and the Department shall furnish a copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of one dollar (\$1.00) for a certified copy, or fifty cents (50¢) for an uncertified copy. . .

* * * * *

COMMENTS

Since the county medical examiner, not the coroner, is presently making the reports required by this section, the Committee recommends substitution of the words "medical examiner" wherever the word "coroner" appears.

Section Rewritten

G.S. 20-168. Drivers of State, county and city vehicles subject to provisions of this article.— (a) Subject to the exceptions in subsection (b), the provisions of this Article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the State or any political subdivision thereof.

(b) While actually engaged in work on the highways, but not while traveling to or from such work, drivers of vehicles owned or operated by the State or any political subdivision thereof are exempt from all provisions of this article except:

- (1) G.S. 20-138. Persons under the influence of intoxicating liquor.
- (2) G.S. 20-139. Persons under the influence of drugs.
- (3) G.S. 20-139.1. Result of a chemical analysis admissible in evidence; presumption.
- (4) G.S. 20-140. Reckless driving.
- (5) G.S. 20-140.4. Homicide by vehicle.

COMMENTS

The Committee recommends that the present section be completely rewritten, removing exemption from serious violations.

Present G.S. 20-168 is carried below for comparison.

§ 20-168. **Drivers of State, county and city vehicles subject to provisions of this article.**—The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by this State or any political subdivisions thereof, or of any city, town or district, except persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of the road, but not when traveling to or from such work. (1937, c. 407, s. 130.)

Section Rewritten

G.S. 20-172. Pedestrians subject to traffic control signals.— (a) The State Highway Commission, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to erect or install, at intersections or other appropriate places, special pedestrian control signals exhibiting the words "WALK" or "DON'T WALK" as a part of a system of traffic control signals or devices.

(b) Whenever special pedestrian control signals are in place such signals shall indicate as follows:

(1) WALK—Pedestrians facing such signal may proceed across the highway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) DON'T WALK—No pedestrian shall start to cross the highway in the direction of such signal, but any pedestrian who has partially completed his crossing on the "WALK" signal shall proceed to a sidewalk or safety island while the "DON'T WALK" signal is showing.

(c) Where a system of traffic control signals or devices does not include special pedestrian control signals, pedestrians shall be subject to the vehicular traffic control signals or devices as they apply to pedestrian traffic.

(d) At places without traffic control signals or devices, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in part eleven of this Article.

COMMENTS

The Committee recommends complete revision of present G.S. 20-172. The language is suggested by UVC 11-203 and UVC 11-501.

Pedestrian signals would be specifically authorized, and obedience would be required.

[Present G.S. 20-172 is carried below.]

§ 20-172. Pedestrians subject to traffic control signals.—Pedestrians shall be subject to traffic control signals at intersections as heretofore declared in this article, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in part eleven of this article. (1937, c. 407, s. 133.)

G.S. 20-173. Pedestrians' right-of-way at crosswalks. -

* * * * *

(c) The driver of a vehicle emerging from or entering an alley, building, private road or driveway shall yield the right-of-way to any pedestrian, or person riding a bicycle, approaching on any sidewalk or walkway extending across such alley, building entrance, road or driveway.

COMMENTS

The Committee recommends adoption of a new subsection (c). The language is suggested by UVC 11-509, except for the reference to bicycle riders.

Present subsections (a) and (b) would be retained without change.

Subsection Rewritten

G.S. 20-174. Crossing at other than crosswalks.

* * * * *

(d) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the extreme left of the roadway or its shoulder facing traffic which may approach from the opposite direction. Such pedestrian shall yield the right-of-way to approaching traffic.

* * * * *

COMMENTS

The Committee recommends that the language of present subsection (d) be replaced by a combination of UVC 11-506 and present G.S. 20-174(d).

[Present G.S. 20-174 is carried below for comparison.]

§ 20-174. Crossing at other than crosswalks.—(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) It shall be unlawful for pedestrians to walk along the traveled portion of any highway except on the extreme left-hand side thereof, and such pedestrians shall yield the right-of-way to approaching traffic.

(e) Notwithstanding the provisions of this section, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (1937, c. 407, s. 135.)

G.S. 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.

* * * * *

(c) [Deleted]

COMMENTS

The Committee recommends repeal of subsection (c), the \$50.00 or 30 days penalty provision. Recommended G.S. 20-176, the general penalty section, would apply.

G.S. 20-175.4. Violations made misdemeanor.

[Deleted]

COMMENTS

The Committee recommends repeal of the present \$50.00 or 30 days penalty section. Recommended G.S. 20-176, the general penalty section, would apply to Part IIA. Blind Pedestrians -- White Canes or Guide Dogs.

G.S. 20-176. Penalty for Misdemeanor.

(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Article unless such violation is by this Article or other law of this State declared to be a felony.

(b) Unless another penalty is in this Article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment.

COMMENTS

The Committee recommends repeal of the following language from subsection (b):

Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plate issued therefor, permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of §§ 20-116, 20-117, 20-122, 20-122.1, 20-123, 20-124, 20-125, 20-126, 20-127, 20-128, 20-129, 20-130, 20-131, 20-132, 20-133, 20-134, 20-140.2, 20-142, 20-143, 20-144, 20-146, 20-147, 20-148, 20-150, 20-151, 20-152, 20-153, 20-154, 20-155, 20-156, 20-157, 20-159, 20-160, 20-161, 20-162, 20-163, 20-165—the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 378, s. 3.)

The \$50.00 or 30 days penalty would be eliminated, leaving only the "\$100.00 or 60 days or both" provision in the general penalty section.

G.S. 20-180. Penalty for speeding.

~~Deleted~~

COMMENTS

The Committee recommends repeal of the section, and merger with recommended G.S. 20-141.

G.S. 20-215.1. Definitions.--

* * * * *

(3) "Motor Vehicle". . .

Deleted.

COMMENTS

The Committee recommends repeal of present subsection (3), and merger of the definition into recommended G.S. 20-1(23).

G.S. 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances.

Section Rewriter

The driver of any vehicle upon approaching from any direction on the same street or highway any school bus (including privately owned buses transporting children), while such bus is stopped and is displaying its mechanical stop signal, or is stopped for the purpose of receiving or discharging passengers, shall bring his vehicle to a full stop before passing or attempting to pass such bus, and shall remain stopped until the mechanical stop signal has been withdrawn or until the bus has moved on. The driver of a vehicle upon any Interstate or other controlled-access highway need not stop upon meeting or passing a school bus which is in the roadway across the dividing space or physical barrier separating the roadways.

The provisions of this section are applicable only in the event the school bus bears upon the front and rear a plainly visible sign containing the words "school bus" in letters not less than eight inches in height.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed \$200 or imprisoned not to exceed 90 days.

COMMENTS

The Committee recommends complete revision of this section; the language is suggested by UVC 11-706 and the present G.S. 20-217. References to "Sunday school bus," etc. and "receiving or discharging passengers" are deleted.

[Present G.S. 20-217 is carried below for comparison.]

§ 20-217. Motor vehicles to stop for school, temple, church and Sunday school buses in certain instances.—Every person using, operating, or driving a motor vehicle upon the roads and highways of this State or upon any street of any town or city in this State, upon approaching from any direction on the same road, highway or street any school bus or any privately owned bus transporting children while such bus is stopped and engaged in receiving or discharging passengers therefrom and displaying its mechanical stop signal upon the roads or highways of the State or upon any of the streets of cities and towns of the State, or at any time while such bus is stopped and is displaying its mechanical stop signal, shall bring his motor vehicle to a full stop before passing or attempting to pass such bus and shall remain stopped until the mechanical stop signal of the bus has been withdrawn or until such bus has moved on; except, that the driver of a vehicle upon any road, highway or street which has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space or by a physical barrier, need not stop upon meeting or passing any such bus which has stopped in the roadway across such dividing space or physical barrier. No operator of such bus shall use the mechanical stop signal installed on such bus except for the purpose of indicating that such bus has stopped or is about to stop for the purpose of receiving or discharging passengers.

The provisions of this section are applicable only in the event the school, church, privately owned bus or Sunday school bus bears upon the front and rear thereof a plainly visible sign containing the words "school bus" or the words "church bus" or "temple bus" or "Sunday school bus" in letters not less than five inches in height.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed two hundred dollars (\$200.00) or imprisoned not to exceed 90 days. (1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370; 1969, c. 952; 1971, c. 245, s. 1.)

G.S. 20-219.1. Removal of unauthorized vehicles from private lots.
Relocated.

G.S. 20-219.2. Removal of unauthorized vehicles from service stations.
Relocated.

COMMENTS

The Committee recommends renumbering present G.S. 20-162.2 and G.S. 20-162.3 to become G.S. 20-219.1 and G.S. 20-219.2. These sections do not relate to rules of the road and do not belong in the Rules-of-the-Road part of Chapter 20. The effect of the renumbering would be to place the sections in Article 7 of Chapter 20. Miscellaneous provisions relating to motor vehicles.

Present G.S. 20-162.2 and G.S. 162.3 are carried below.

§ 20-162.2. Removal of unauthorized vehicles from private lots.—

(a) It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park a motor or other vehicle in such private parking space without the express permission of the owner or lessee of such space; provided, that such private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner; a vehicle parked in a privately owned parking space in violation of this section may be removed from such space upon the written request of the parking space owner or lessee to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such lot pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid space to place of storage.

(b) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than ten dollars (\$10.00) in the discretion of the court.

(c) This section shall apply only to the counties of Craven, Guilford, New Hanover, Orange, Robeson, Wake, Wilson. (1969, cc. 173, 288; 1971, c. 986.)

§ 20-162.3. Removal of unauthorized vehicles from gasoline service station premises.—(a) No motor vehicle shall be left for more than 48 hours upon the premises of any gasoline service station without the consent of the owner or operator of the service station.

(b) The registered owner of any motor vehicle left unattended upon the premises of a service station in violation of subsection (a) shall be given notice by the owner or operator of said station of said violation. The notice given shall be by certified mail return receipt requested addressed to the registered owner of the motor vehicle.

(c) Upon the expiration of 10 days from the return of the receipt showing that the notice was received by the addressee, such vehicle left on the premises of a service station in violation of this section may be removed from the station premises to a place of storage and the registered owner of such vehicle shall become liable for the reasonable removal and storage charges and the vehicle subject to the storage lien created by G.S. 44A-1 et seq. No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any vehicle removed from such station premises pursuant to this section except where such vehicle is willfully or maliciously damaged in the removal from such station premises to place of storage.

(d) In the alternative, the station owner or operator may charge for storage, assert a lien, and dispose of the vehicle under the terms of G.S. 44A-4(b) through (g). The proceeds from the sale of the vehicle shall be disbursed as provided in G.S. 44A-5. (1971, c. 1220.)

G.S. 20-279.1. Definitions.--

Subsections deleted.

COMMENTS

The Committee recommends deletion of parts of the present section, merger of these parts with recommended G.S. 20-1 and appropriate renumbering of the remaining subsections.

See the comments for recommended G.S. 20-1.

G.S. 20-279.14. Suspension to continue until judgement satisfied.- Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgement is stayed, satisfied in full or to the extent hereinafter provided subject to the exemptions stated in G.S. 20-279.13 and 20-279.16 of this Article.

COMMENTS

The Committee recommends repeal of the last paragraph of the present section which excepts a type of judgement from bankruptcy discharge. It is suggested that the exception to bankruptcy discharge is subject to Constitutional attack.

[See Perez v. Campbell, 402 U.S. 637 (1971).]

G.S. 20-286. | Definitions.---

[Subsections deleted.]

COMMENTS

The Committee recommends deletion of parts of the present section, merger of these parts with recommended G.S. 20-1 and appropriate renumbering of the remaining subsections.

[See the comments for recommended G.S. 20-1.]

G.S. 20-279.14. Suspension to continue until judgement satisfied.- Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgement is stayed, satisfied in full or to the extent hereinafter provided subject to the exemptions stated in G.S. 20-279.13 and 20-279.16 of this Article.

COMMENTS

The Committee recommends repeal of the last paragraph of the present section which excepts a type of judgement from bankruptcy discharge. It is suggested that the exception to bankruptcy discharge is subject to Constitutional attack.

[See Perez v. Campbell, 402 U.S. 637 (1971).]

G.S. 20-286. | Definitions.---

Subsections deleted.

COMMENTS

The Committee recommends deletion of parts of the present section, merger of these parts with recommended G.S. 20-1 and appropriate renumbering of the remaining subsections.

See the comments for recommended G.S. 20-1.

G.S. 14-83. Unauthorized use of a conveyance.---

(a) A person is guilty of an offense under this section if, without the consent of the owner, he takes, operates, or exercises control over an aircraft, motorboat, motor vehicle, or other motor-propelled conveyance of another.

(b) Consent may not be presumed or implied because of the consent of the owner on a previous occasion to the taking, operating, or exercising control of a conveyance given to the person charged or to another person.

(c) Unauthorized use of an aircraft is a felony punishable by a fine, imprisonment not to exceed five years, or both, in the discretion of the court. All other unauthorized use of a conveyance is a misdemeanor punishable by a fine, imprisonment not to exceed two years, or both, in the discretion of the court.

(d) An offense under this section may be treated as a lesser-included offense of the offense of larceny of a conveyance.

(e) As used in this section "owner" means any person with an interest in property such that it is property of another as far as the person accused of the offense is concerned.

COMMENTS

The Committee recommends repeal of present G.S. 20-105.

Unlawful taking of a vehicle, and add addition of a new section--
G.S. 14-83. Unauthorized use of a conveyance; offense a lesser-included offense of larceny. This new recommended section would basically follow model provisions from the new Federal Criminal Code of the National Commission on Reform of Federal Criminal Laws.

Recommended subsection (d) would make unauthorized use a lesser-included offense of larceny of a conveyance.

Present G.S. 20-105 is carried below, and materials concerning the revision are carried in Appendix IX.⁷

§ 20-105. Unlawful taking of a vehicle. — Any person who drives or otherwise takes and carries away a vehicle, not his own, without the consent of the owner thereof, and with intent to temporarily deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor. A violation of this section shall be punishable by fine, or by imprisonment not exceeding two years, or both, in the discretion of the court. (1937, c. 407, s. 69; 1943, c. 543; 1965, c. 193.)

Editor's Note.—The 1965 amendment added the last sentence.

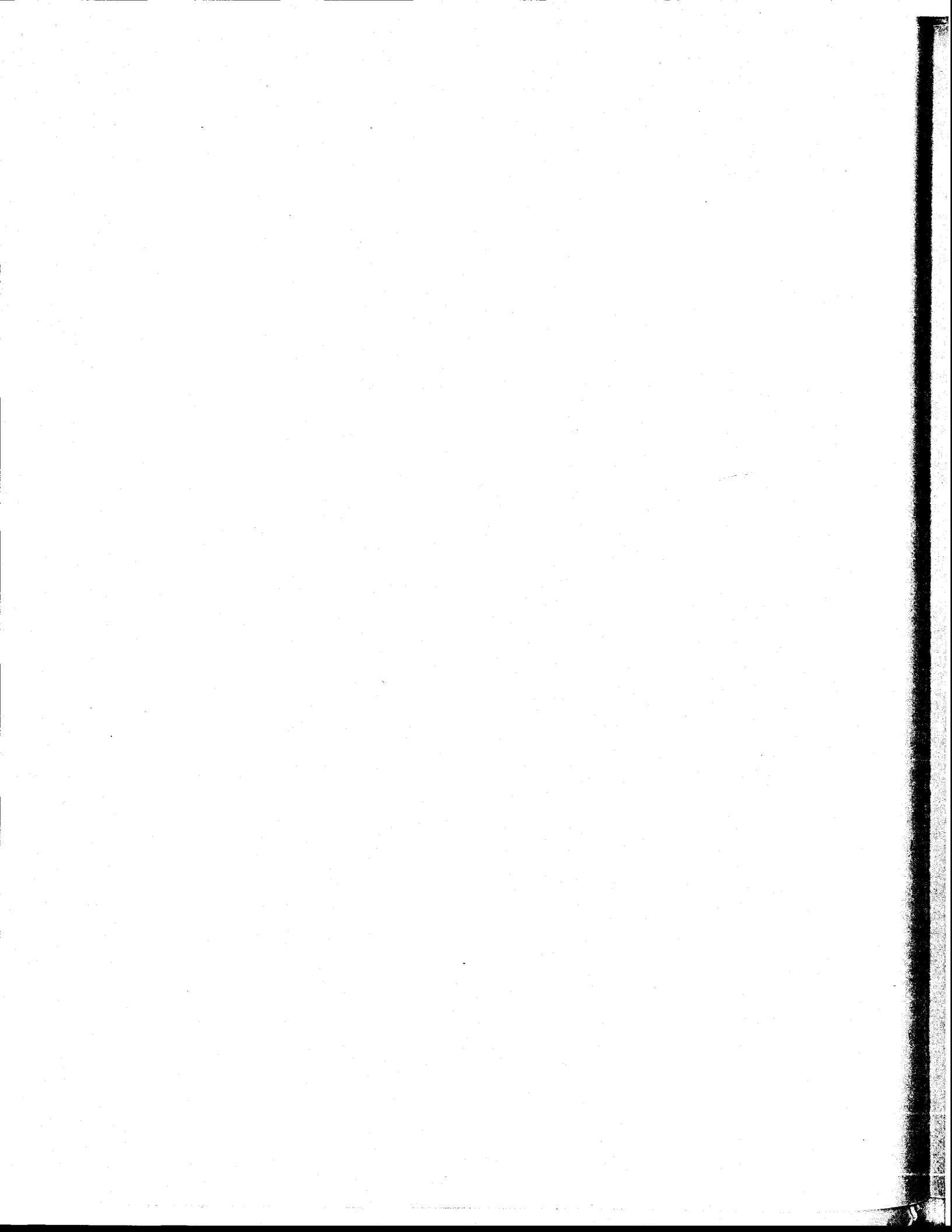
Civil Liability of Owner for Injuries.—The owner is not liable for an injury caused by his automobile while it is operated by another without his consent. This applies to parent and child and where the father forbade his child from taking his car he is not liable. *Linville v. Nissen*, 162 N.C. 95, 77 S.E. 1096 (1913), decided under earlier similar law.

An indictment charging larceny and receiving does not include a charge of driving a motor vehicle without the knowledge or consent of the owner, and a defendant charged in the indictment only with larceny

and receiving may not be convicted under this section. *State v. Stinnett*, 203 N.C. 829, 167 S.E. 63 (1933), decided under earlier similar law.

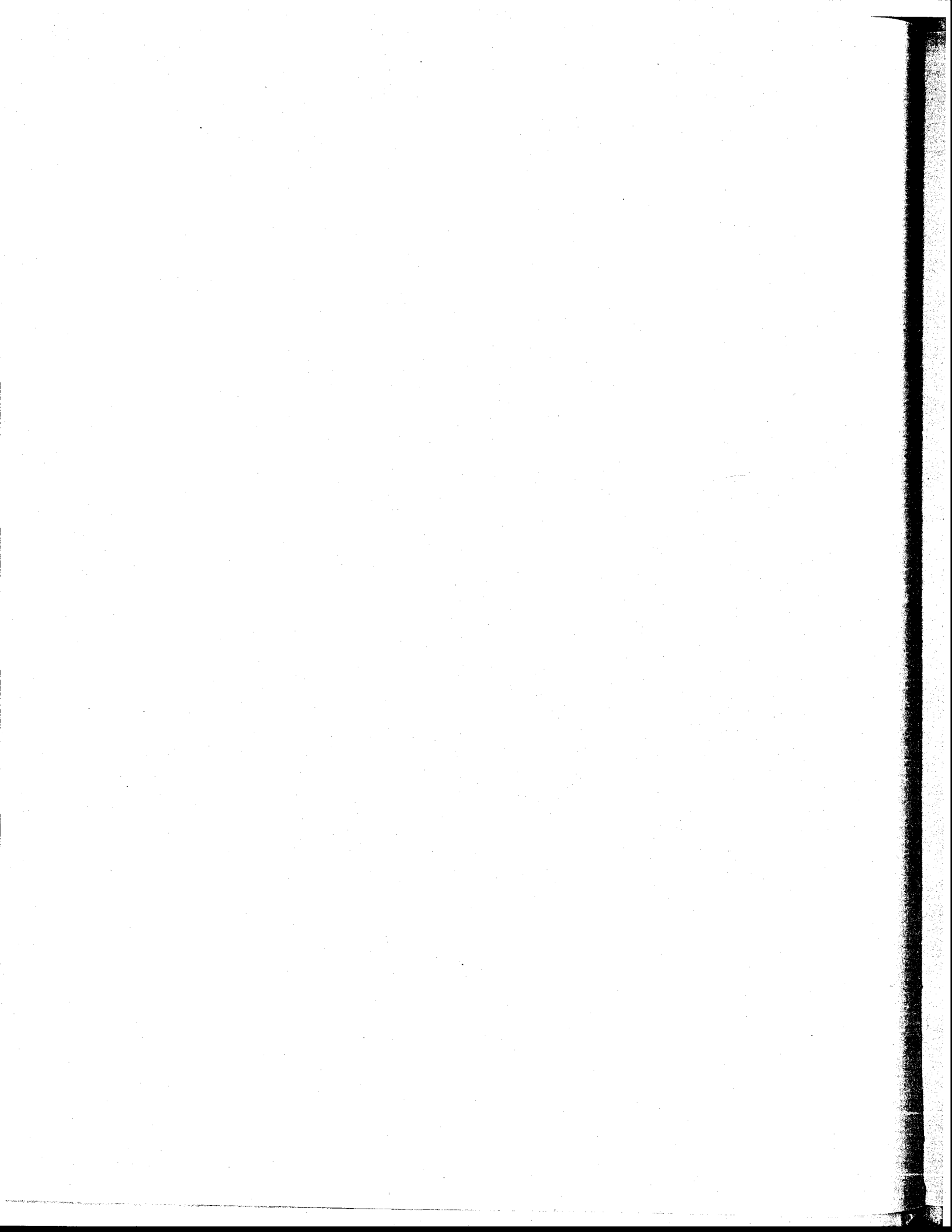
While the State's evidence was sufficient to support a conviction for violation of this section, (1) defendant was not charged with such violation, and (2) a defendant may not be convicted under this section upon trial on a bill of indictment for larceny. *State v. McCrary*, 263 N.C. 490, 139 S.E.2d 739 (1965).

Applied in *U Drive It Auto. Co. v. Atlantic Fire Ins. Co.*, 239 N.C. 416, 80 S.E.2d 35 (1954).



APPENDIX I

Resolution Directing the Study



GENERAL ASSEMBLY OF NORTH CAROLINA
1971 SESSION

SENATE RESOLUTION 964

Adopted July 14, 1971

(Public)

Sponsors: Senators Jones and Crawford.

Referred to: Calendar Committee.

July 12

1 A SENATE RESOLUTION DIRECTING THE LEGISLATIVE RESEARCH COMMISSION
2 TO STUDY LAWS PERTAINING TO MOTOR VEHICLES.

3 Whereas, the sale and possession of motor vehicles in
4 the State of North Carolina has increased considerably and the
5 use and control thereof is an ever increasing problem; and

6 Whereas, it is felt that a redrafting of Chapter 20 of
7 the General Statutes and other pertinent provisions of law to
8 update, classify, and consolidate the various laws on this
9 subject would be beneficial in the understanding and enforcement
10 of pertinent laws both to the bodies charged with their
11 enforcement and to the general public;

12 Now, therefore, be it resolved by the Senate:

13 Section 1. The Legislative Research Commission is
14 directed to study the laws of the State relating to motor
15 vehicles and to recommend such revision of Chapter 20 as it may
16 deem advisable, to the end that such laws shall be more cohesive,
17 more easily understood and less ambiguous to the end that the
18 enforcement authorities and the general public will be more able
19 to understand, enforce and abide by such laws.

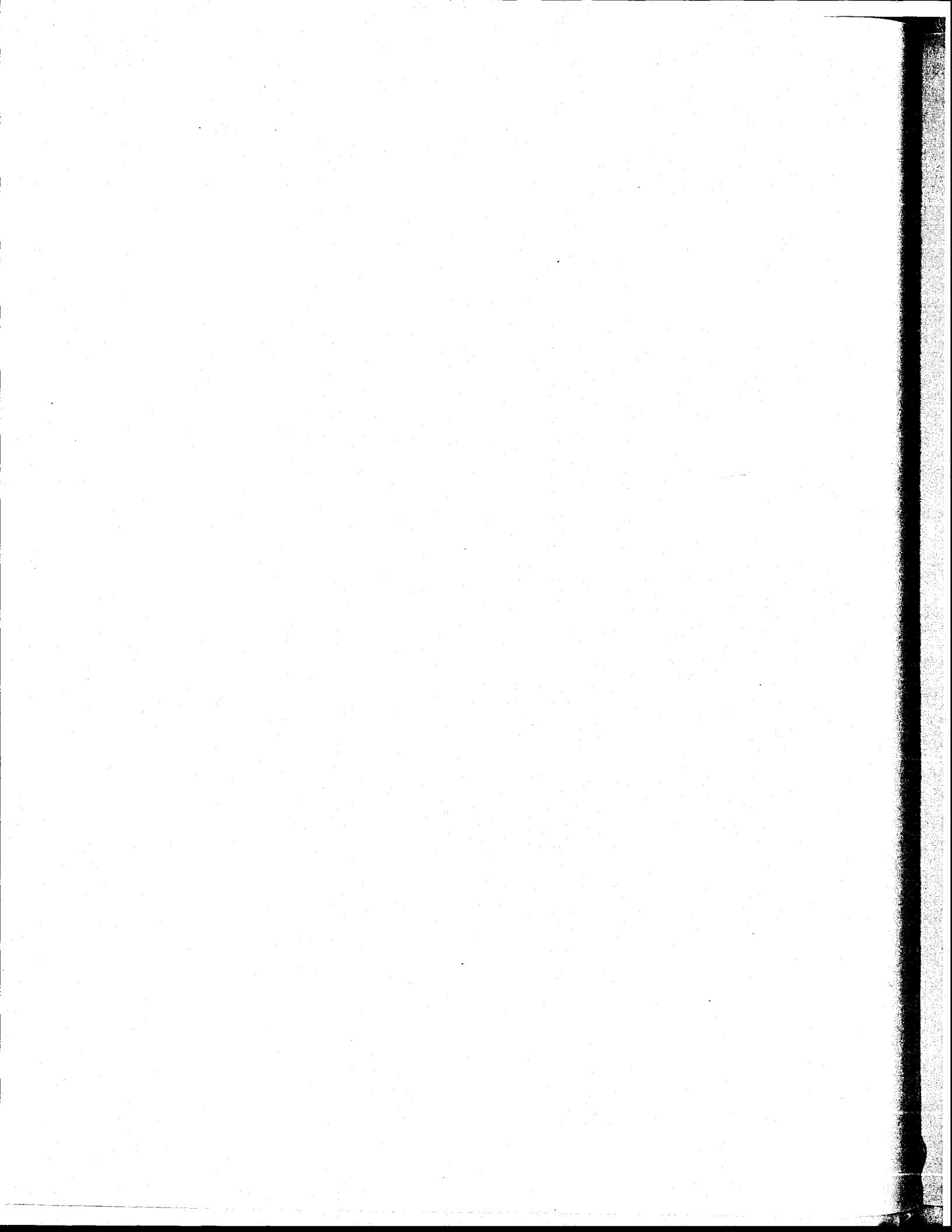
20 Sec. 2. The Legislative Research Commission shall
21 report its findings and recommendations to the 1973 Senate.

1 Sec. 3. This resolution shall become effective upon
2 adoption.

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APPENDIX II

List of Committee Meetings
and
Participants at the Meetings



LIST OF MEETINGS AND PARTICIPANTS
 N. C. LEGISLATIVE RESEARCH COMMISSION
 COMMITTEE ON MOTOR VEHICLES

MEETING DATE

1. January 25, 1972 - Organization and Orientation.

*PARTICIPANTS:

Mr. William W. Melvin, Assistant Attorney General
 N. C. Department of Justice

Mr. J. M. Penny, Assistant Commissioner
 N. C. Department of Motor Vehicles

COMMITTEE STAFF:

Mr. Ben F. Loeb, Jr., Assistant Director
 Institute of Government

Mr. William H. Potter, Jr., Director of Research
 Legislative Services Office

*(Mr. Loeb and Mr. Potter provided staff assistance for
 the Committee throughout its deliberations.)

2. February 10, 1972 - Decision on initial approach; comparison
 of General Statutes to the Uniform
 Vehicular Code; input from Judges and
 Solicitors.

*PARTICIPANT:

Mr. William W. Melvin, Assistant Attorney General
 N. C. Department of Justice

3. February 24, 1972 - Begin examination of Uniform Vehicular
 Code (UVC 11-101 through UVC 11-304).

*PARTICIPANT:

Mr. William W. Melvin, Assistant Attorney General
 N. C. Department of Justice

4. March 16, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-305 through UVC 11-509).

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

5. March 23, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-806 through UVC 11-904).

*PARTICIPANT:

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

6. May 11, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-806 through UVC 11-904).

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

7. May 18, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-1101 through UVC 11-1207).

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

8. June 1, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-805 through UVC 11-1306).

*PARTICIPANTS:

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Mr. J. G. Wilson, Assistant Director
License and Theft Division
N. C. Department of Motor Vehicles

9. June 15, 1972 - Continue Comparison with Uniform Vehicular Code (UVC 11-902 through UVC 11-902.2).

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Col. Edwin C. Guy, Commander
N. C. Highway Patrol

Mr. Coy C. Privette, President
Christian Action League of N. C.

Mrs. John D. Sugg
N. C. Women's Highway Safety League

10. July 6, 1972 - Begin Final Drafting.

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice.

Mr. Steve Meyer, Research Assistant
Institute of Government

11. July 13, 1972 - Further Drafting: Punishment Provisions.

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

12. July 20, 1972 - Further Drafting; "Temporary Larceny."

*PARTICIPANTS:

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

Mr. Dexter Watts, Assistant Director
Institute of Government

13. July 27, 1972 - Definition Consolidation.

*PARTICIPANTS:

Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

Mr. William W. Melvin, Assistant Attorney General
N. C. Department of Justice

14. August 2, 1972 - Definition Consolidation.

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

15. September 28, 1972 - Final Drafting.

*PARTICIPANTS:

Mr. Joe W. Garrett, Commissioner
N. C. Department of Motor Vehicles

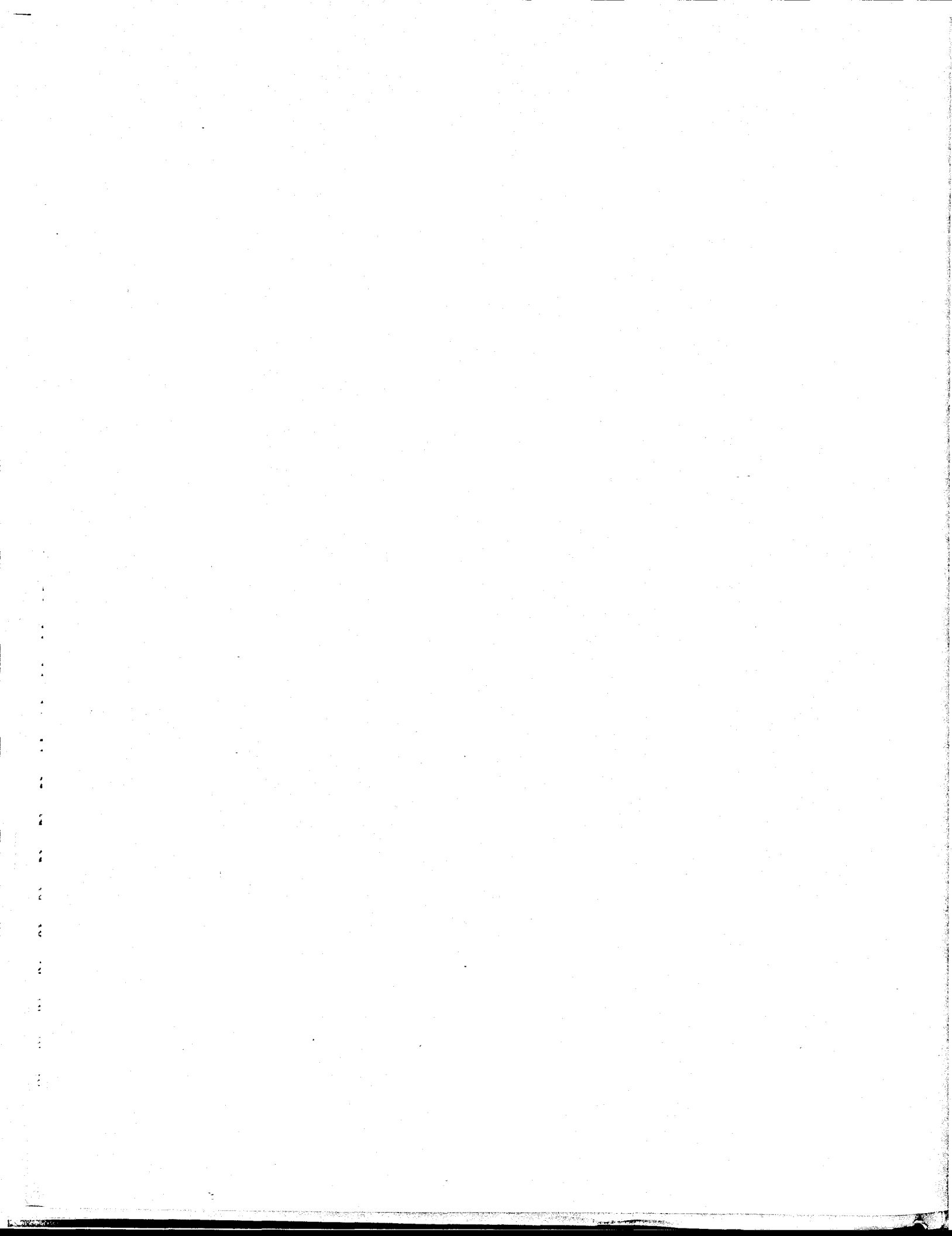
Mr. J. M. Penny, Assistant Commissioner
N. C. Department of Motor Vehicles

APPENDIX III

Letter to Judges and Solicitors

and

Catalogue of Responses



February 21, 1972, and
February 28, 1972

Nr. To N. C. Judges & Solicitors

Dear Mr.

The 1971 General Assembly directed the Legislative Research Commission "to study the laws of the State relating to motor vehicles and to recommend such revision of Chapter 20 as it may deem advisable, to the end that such laws shall be more cohesive, more easily understood and less ambiguous to the end that the enforcement authorities and the general public will be more able to understand, enforce and abide by such laws."

A committee has been established for this purpose. The committee will be meeting once every two weeks over the next few months, and it has commenced its work with a comparative study of the provisions of the Uniform Vehicle Code relating to the "Rules of the Road."

Realizing that a comprehensive revision of the whole of Chapter 20 will not be possible in the time allotted, the committee has requested that I write to the judges and solicitors of the State to request their advice regarding particular problems encountered in interpreting and applying the provisions of Chapter 20. We would be most appreciative if you would at your earliest convenience advise us in writing as to any problems you may have encountered and as to any suggestions you may have as to their solution.

Thanking you for your cooperation and assistance, I am

Very truly yours,

Willis P. Whichard
Chairman
Committee on Motor Vehicles

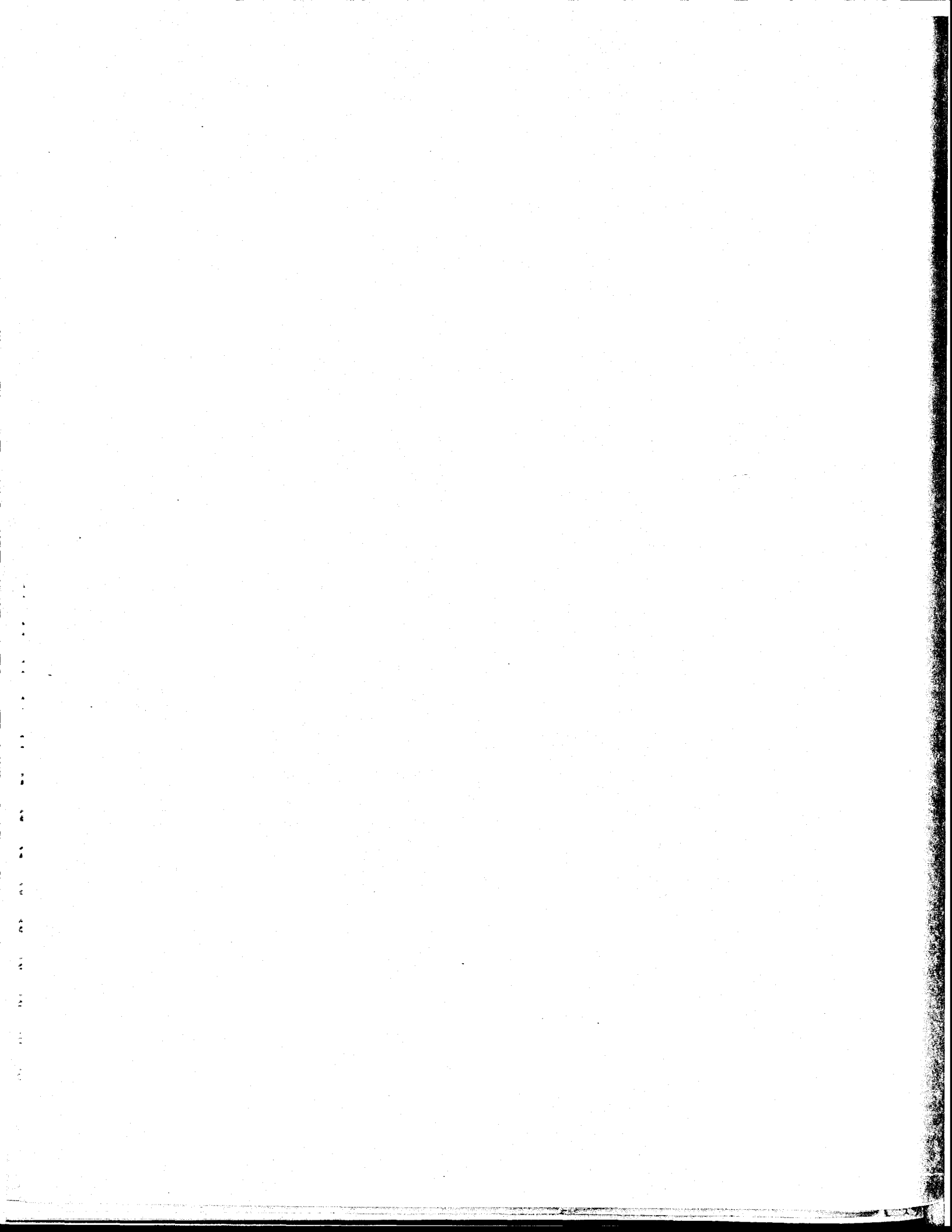
WPW:jab

PROPOSED IMPROVEMENTS TO N.C.G.S. Chapter 20
 (Responses to February 21, 1972, letter from LRC Committee
 on Motor Vehicles)

<u>Suggestion concerning:</u>	<u>Number of suggestions:</u>
1. BREATHALYZER	6 suggestions from 4 respondents
2. DRIVING UNDER THE INFLUENCE (Not concerning Breathalyzer)	3 suggestions from 2 respondents
3. MINOR TRAFFIC OFFENSES SHOULD HAVE ADMINISTRATIVE, RATHER THAN CRIMINAL TREATMENT	5 suggestions from 5 respondents
4. LIMITED DRIVING PRIVILEGES - REPEAL, OR GIVE APPLICATION TO ALL OFFENSES	5 suggestions from 5 respondents
5. BETTER INDEXING	4 suggestions from 4 respondents
6. REVISION OF PENALTY PROVISIONS	3 suggestions from 3 respondents
7. ENACT CARELESS DRIVING PROVISION	2 suggestions from 2 respondents
8. PROVIDE PENALTY FOR FAILURE TO APPEAR	2 suggestions from 2 respondents
9. REWORK DEPARTMENT OF MOTOR VEHICLES SUSPENSION SYSTEM	2 suggestions from 2 respondents
10. PROVISION FOR VEHICULAR HOMICIDE	1 suggestion from 1 respondent
11. MISCELLANEOUS	23 suggestions

APPENDIX IV

Correspondence with the Commissioner
of Motor Vehicles





State of North Carolina
Department of Motor Vehicles
Raleigh 27611

JOE W. GARRETT
COMMISSIONER

JOHN N. LOCKAMY
J. M. PENNY
ASST. COMMISSIONER

21 December 1971

Mr. William H. Potter, Jr.
Director of Research
North Carolina General Assembly
Legislative Services Office
State Legislative Building
Raleigh, North Carolina 27602

Dear Mr. Potter:

This will acknowledge receipt of your letter enclosing a copy of Senate Resolution 964 directing the Legislative Research Commission to study the Motor Vehicle Laws in Chapter 20 of the General Statutes and to make such recommendations for revision to the end such laws shall be more cohesive, more easily understood and less ambiguous so that the enforcement authorities and the general public will be more able to understand, enforce and abide by such laws.

In your letter you invite me to express some brief initial reaction to the proposed study. Frankly, there is no question but what there is a need to give consideration to this idea. Chapter 20 has not been rewritten since 1937, almost 35 years ago. However, each succeeding General Assembly has made numerous additions, rewritten and repealed portions thereof.

For many years there has been a National Committee on Uniform Traffic Laws and Ordinances which has adopted a recommended Uniform Vehicle Code for the use of all states. Periodically this Committee, which consists of over 100 representatives of Federal, State, Local Governments and representatives of highway user groups, updates the Code to meet current traffic conditions. I happen to be a member of this Committee. In November, 1971 this Committee met to consider approximately 200 suggested changes and a revised code is now being printed.

Each time the Code is updated we attempt to have the North Carolina laws compared with it to determine where we are at variance therewith. Periodically thereafter, we would make recommendations to our General Assembly.

Mr. William H. Potter, Jr.

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December 21, 1971

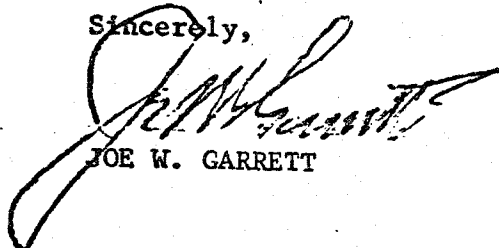
In 1970 we received a grant from the National Highway Safety Administration and had a comparison made of all articles of Chapter 20 that pertain to traffic safety. I am attaching herewith a copy of this comparison. I am also attaching a copy of a letter I received from the Executive Director of the NCUTLO in response to a letter from me requesting him to pin point sections that he felt varied from the UVC to such an extent that it created "serious hazards" to non-residents traveling in this State.

While there may be a need to study Chapter 20 in its entirety I really believe it would be a large undertaking for one General Assembly. Therefore, consideration might be given to certain articles thereof which might be of most concern to the motoring public at this time with a continuing study for other parts later.

Rest assured that I, along with any members of this Department, will be glad to cooperate with you in any way possible.

Kindest regards.

Sincerely,



JOE W. GARRETT

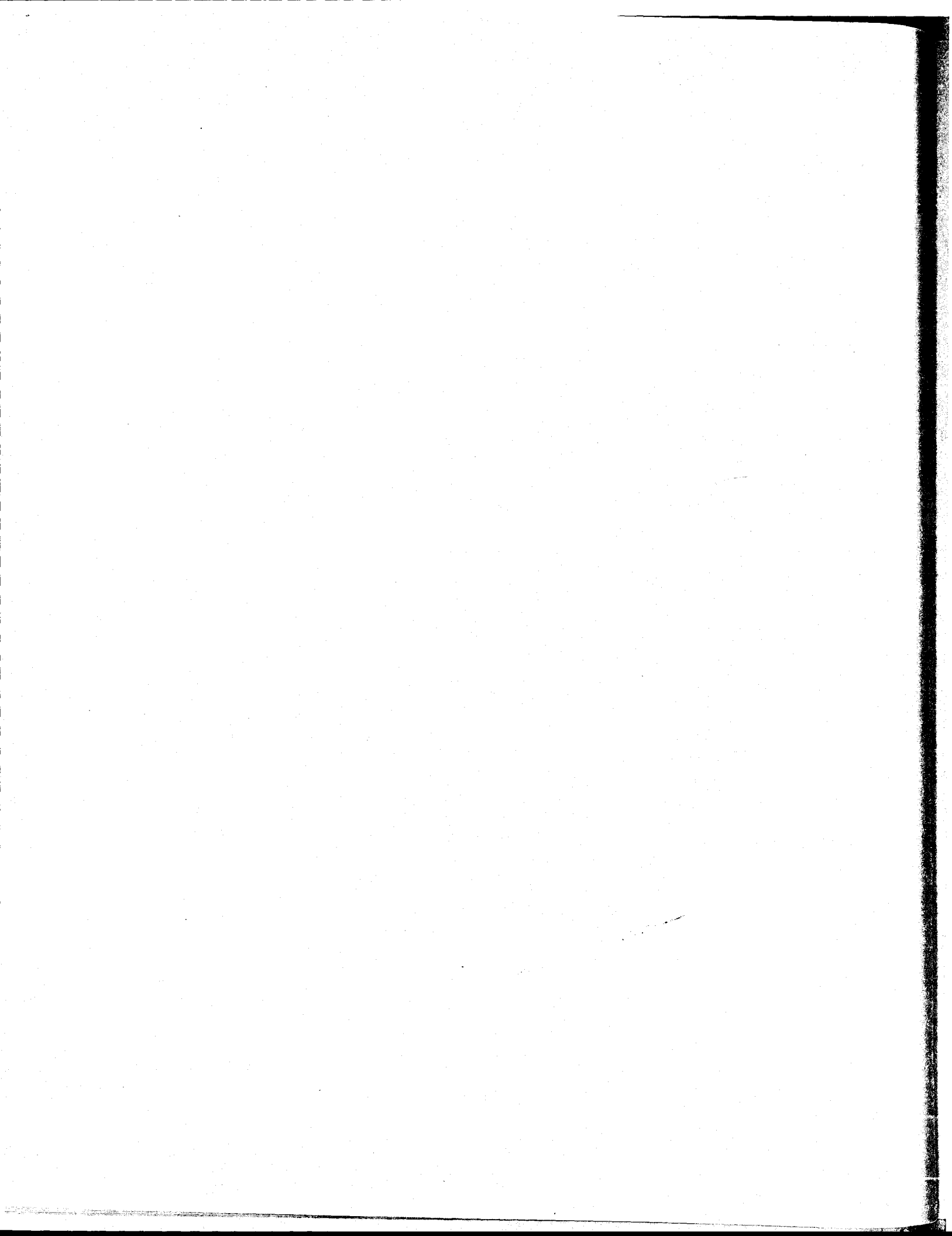
JWG:nd

Enclosures

APPENDIX V

Uniform Vehicle Code Materials

(The National Committee on Uniform Traffic Laws and Ordinances, an independent, non-profit, voluntary Association, maintains the Uniform Vehicle Code as a comprehensive national guide for state motor vehicle and traffic laws.)



V - 1

NATIONAL COMMITTEE
ON
UNIFORM TRAFFIC LAWS AND ORDINANCES



955 NORTH L'ENFANT PLAZA, S. W.

WASHINGTON, D. C. 20024

TELEPHONE 484-312

YULE FISHER, National Chairman
EDWARD F. KEARNEY, Executive Director

October 18, 1971



Mr. Joe W. Garrett, Commissioner
Department of Motor Vehicles
Raleigh, North Carolina 27602

Dear Joe:

Your letter of October 12, 1971, asks me to designate 10 or 15 sections of the Uniform Vehicle Code from which the North Carolina laws vary to such an extent that they create "serious hazards" to nonresidents traveling in North Carolina on a permanent, regular or temporary basis.

In the enclosed Commentary 70-6, we identified five areas where North Carolina laws differ significantly from the Uniform Vehicle Code and the laws of other states:

UVC § 11-202(c)1
UVC § 11-304(a)1
UVC § 11-405(a)
UVC § 11-601(b)
UVC § 11-1303(d)

Also in the enclosed Commentary, we note that North Carolina does not have counterparts for provisions in the UVC in 98, out of a possible 205, instances. See the zeros in the tables on pages 7 to 14.

In lieu of a complete and long-overdue modernization of North Carolina traffic laws, I recommend:

1. The adoption of UVC §§ 11-201 to 11-204.1. These provisions are essential to give uniform meaning to important traffic control devices throughout North Carolina and thus are in the best interest of nonresidents and residents.

Mr. Joe W. Garrett
October 18, 1971
Page two

2. The adoption of UVC §§ 11-401 to 11-405. Uniformity among rules relating to right of way is important for residents and non-residents. The North Carolina law comparable to UVC § 11-402 is now the only one in the United States that expresses the obsolete rule requiring a driver approaching an intersection to yield to a vehicle making a left turn. Our statement on this matter appearing on pages 102-103 of the "1970 Annual Supplement" for Uniform Vehicle Code: Rules of the Road with Statutory Annotations tried to give the North Carolina law the benefit of every doubt. In my opinion, we tried too hard.

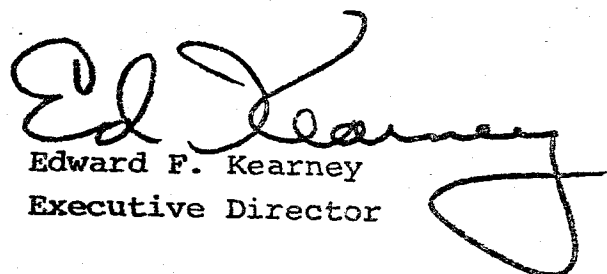
3. Another important new area of traffic laws is UVC §§ 11-1301 to 11-1306 relating to motorcycles.

4. As to special stops (UVC §§ 11-701 to 11-706), the comparable North Carolina laws need significant improvements and have one unique feature. They are the only ones in the United States requiring drivers to stop for "school, church and Sunday school busses." Also, North Carolina Gen. Stat. § 20-217 differs from the UVC by relying upon a "mechanical stop signal" to stop traffic instead of alternately-flashing red lights. The danger of these differences is great in terms of the children of North Carolina vis-a-vis drivers from other states who probably have never seen nor heard of a "church bus" or a "Sunday school bus" or who are not accustomed to stopping for stop arms. I stand for the proposition that drivers should be required to stop for stopped yellow vehicles that display a "school bus" sign and alternately-flashing red lights. Why can not church and Sunday school buses be so designated, colored and equipped?

As you know, my predecessor (Bob Montgomery) is from North Carolina. When I wrote Commentary 64-3 on "Motorists' Duties Toward School Children," Bob didn't believe me when I told him that only the laws of North Carolina require drivers to stop for a "Sunday school" or "church" bus. He made me re-check state laws and this work confirmed my earlier research. Further, Bob seemed surprised that I never had seen such vehicles.

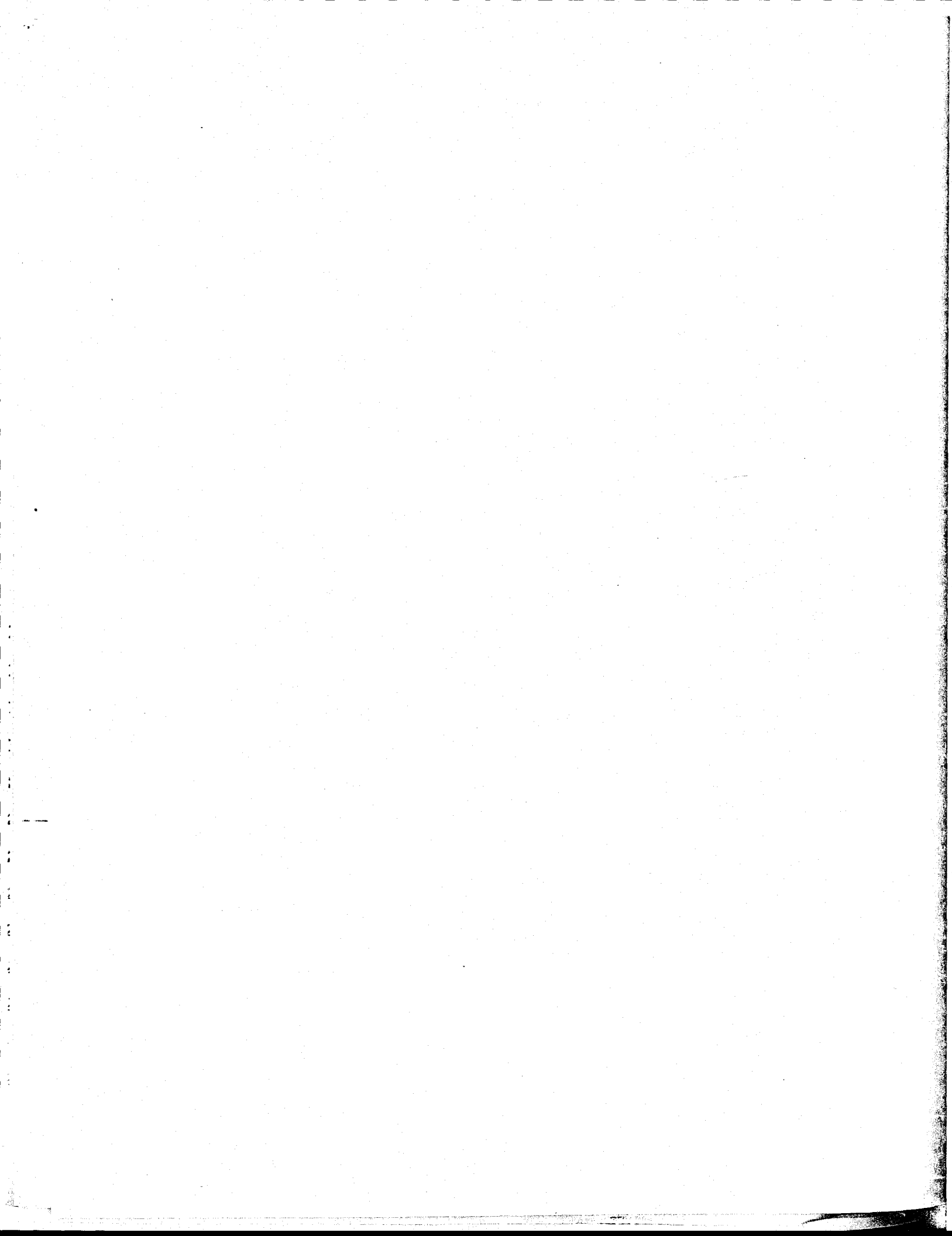
Hoping this letter will be of some assistance, I am,

Cordially,


Edward F. Kearney
Executive Director

APPENDIX VI

Argersinger Case; Right to Counsel



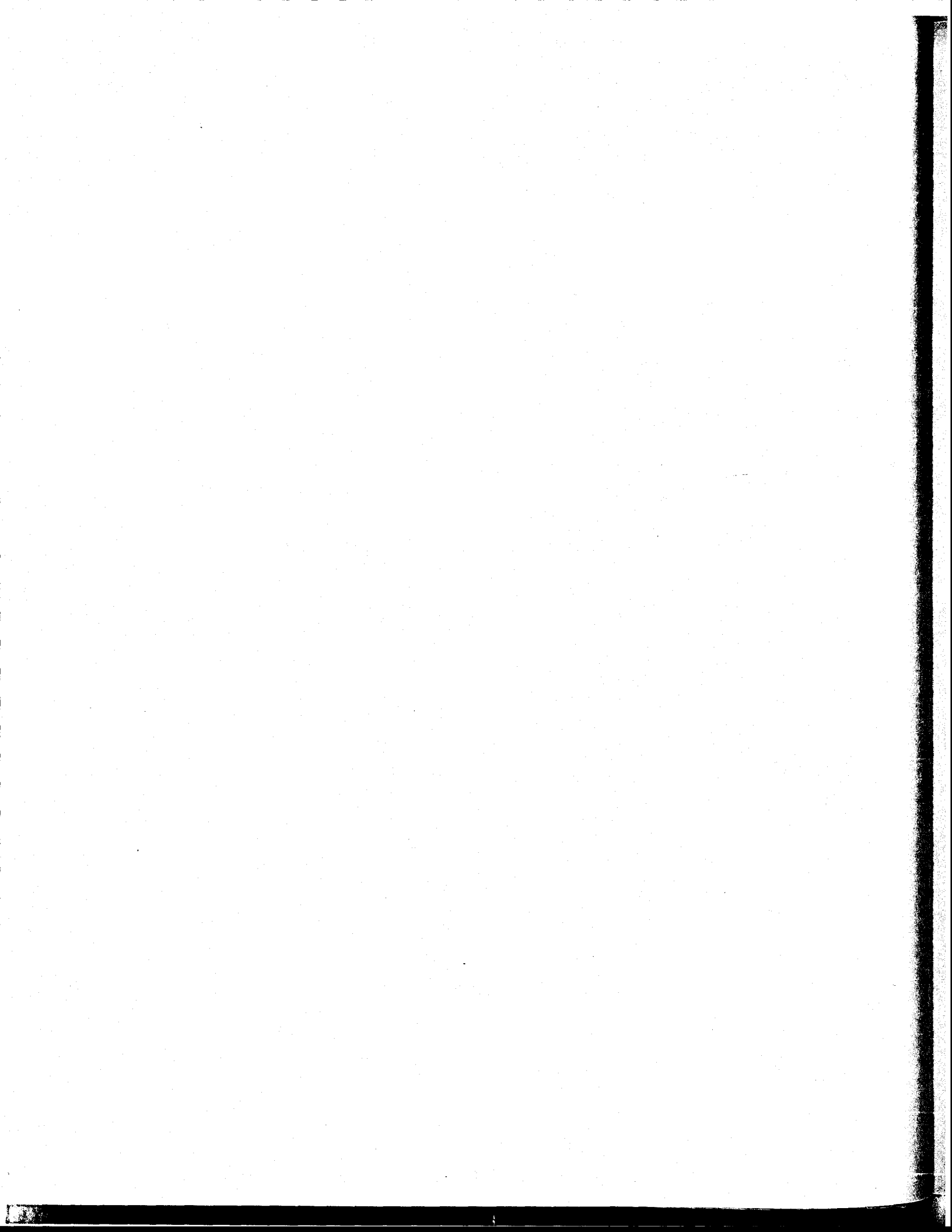
Selected Quotations from: Argersinger v. Hamlin,
40 Law Week 4679 (June 12, 1972)

Held: "(A)bsent a knowing and inteligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

"How crimes should be classified is largely a state matter.* The fact that traffic charges technically fall within the category of 'criminal prosecutions' does not necessarily mean that many of them will be brought into the class where imprisonment actually occurs.

*One partial solution to the problem of minor offenses may well be to remove them from the court system."

"(E)very judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel."



MEMORANDUM

TO : Criminal Justice Officials
FROM: Dexter Watts and Ed Hinsdale
DATE: June 13, 1972
SUBJECT: Right to Counsel in Minor Misdemeanor Cases

On June 12 the Supreme Court of the United States overturned the conviction of an indigent defendant who had been tried in a state court without counsel for a misdemeanor punishable by imprisonment up to six months, \$1,000.00 fine, or both, and given a ninety-day jail sentence. All nine Justices concurred in ruling that the dividing line of more than six months of imprisonment being possible before trial by jury is required had support in the common law as to juries--but did not carry over to right to counsel under the Sixth Amendment. Argersinger v. Hamlin.

Six Justices joined the opinion of the Court written by Justice Douglas which refused to consider whether counsel must be appointed for indigents in all misdemeanor cases but held that at least no sentence of imprisonment, however brief, may be imposed upon any indigent defendant tried without counsel. In addition, Chief Justice Burger in his concurring opinion appeared to accept the basic rationale of the opinion of the Court. The concurring opinion of Justice Powell, in which Justice Rehnquist joined, took a different approach. Justice Powell agreed that the complexity of the misdemeanor case and the consequent need for counsel might not turn on the question whether the sentence could be over six months or not, but he would have left it in the discretion of the trial

judge in petty offense cases whether counsel need be appointed--on a case-by-case basis, with right of appellate review as to whether the judge properly exercised his discretion.

Reasoning of the Opinion of the Court

The following excerpts from the opinion of the Court, omitting footnotes, reflect the reasoning of Justice Douglas:

Both Powell [v. Alabama, 287 U.S. 60,] and Gideon [v. Wainwright, 372 U.S. 335,] involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty. Powell and Gideon suggest that there are certain fundamental rights applicable to all such criminal prosecutions, even those, such as In re Oliver, supra [333 U.S. 257], where the penalty is 60 days' imprisonment:

"A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence; and these rights included, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." 333 U.S., at 273 (emphasis supplied [by Court]).

The requirement of counsel may well be necessary for a fair trial even in a petty offense prosecution. We are by no means convinced that legal and constitutional questions in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more.
.....

The trial of vagrancy cases is illustrative. While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions.

.....
Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as in felony cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result.

.....

That picture is seen in almost every report. "The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court."

There is evidence of the prejudice which results to misdemeanor defendants from this "assembly-line justice." One study concluded that "Misdemeanants represented by attorneys are five times as likely to emerge from police court with all charges dismissed as are defendants who face similar charges without counsel."

We must conclude, therefore, that the problems associated with misdemeanor and petty offenses often require the presence of counsel to insure the accused a fair trial. Mr. Justice Powell suggests that these problems are raised even in situations where there is no prospect of imprisonment. We need not consider the requirements of the Sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here, petitioner was in fact sentenced to jail. And, as we said in Baldwin v. New York, 399 U.S., at 73: "[T]he prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions affecting his career and his reputation."

We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.

That is the view of the Supreme Court of Oregon with which we agree. It said in Application of Stevenson, ___ Ore. ___, 458 P. 2d 414, 419:

"We hold that no person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions, including prosecutions for violations of municipal ordinances. The denial of the assistance of counsel will preclude the imposition of a jail sentence."

..... How crimes should be classified is largely a state matter. The fact that traffic charges technically fall within the category of "criminal prosecutions" does not necessarily mean that many of them will be brought into the class where imprisonment actually occurs.

.....

Under the rule we announce today, every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is repre-

mented by counsel. He will have a measure of the seriousness and gravity of the offense and therefore know when to name a lawyer to represent the accused before the trial starts.

The run of misdemeanors will not be affected by today's ruling. But in those that end up in actual deprivation of a person's liberty, the accused will receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy.

Coping with the Problem in North Carolina

North Carolina's statutes on assigning counsel in criminal cases are in Article 36 of Chapter 7A of the General Statutes. G.S. 7A-451(a)(1) states that an indigent person is entitled to services of counsel in any felony case and in any misdemeanor case in which the authorized punishment exceeds six months' imprisonment or a \$500.00 fine. G.S. 7A-452(a) provides that counsel are to be assigned by the court, except that a public defender may assign himself or an assistant public defender tentatively to represent an indigent, subject to subsequent approval by the court. G.S. 7A-452(b) provides that fees of assigned counsel and salaries and other operating expenses of the offices of public defenders are to be borne by the State.

As the Argersinger case does not directly require that counsel be appointed in any class of case, and only imposes a limitation on type of punishment if counsel is not furnished, it becomes difficult to argue that the case enlarges the powers of judges to make appointment of counsel to indigents under Article 7A. Indeed, appropriations for appointed counsel and public defenders' offices have been made by the General Assembly on the basis of the cut-off in G.S. 7A-451(a)(1). On the authority of State v. Davis, 270 N.C. 1 (1967), it would clearly seem that judges in North Carolina retain their common law powers to appoint counsel to

represent indigents in proceedings in which there is no statutory authority for compensation, and that members of the bar are under a duty to accept such uncompensated appointment.

Once it is granted that district and superior court judges have the power to appoint counsel in minor misdemeanor cases, coping with the problems raised by Argersinger becomes somewhat more manageable. It will be necessary, though, for solicitors and their assistants to do a bit more screening of cases than is normally the rule to separate the imprisonment-likely cases from the imprisonment-unlikely. The opinion of the Court speaks only of pretrial screening by the judge, but Justice Burger's concurring opinion includes the prosecutor; in fact, he pointedly mentions the fact that the judge who sits without a jury should not allow himself to become aware of possible prejudicial information concerning a defendant, such as prior convictions, in advance of trial. This means, in effect, that the actual screening of cases will become the primary responsibility of the solicitor or assistant, though the final decision as to whether to appoint counsel lies with the judge.

Specific additional questions or problems raised by the case will be treated in the paragraphs below.

Applies to Guilty Pleas

It is clear that Argersinger applies to guilty pleas as well as trials. And, apparently, guilty pleas before magistrates constitute no exception. If there are any districts in which it is now customary to allow magistrates to impose active sentences, such as in public drunkenness and simple assault cases, it may be desirable for the chief district court judge to set up guidelines for diverting the imprisonment-likely cases into the

regular dockets of the district court. In some instances, it may be permissible to handle an imprisonment-likely guilty plea upon a written waiver of counsel. The waiver is discussed in general below.

Written Waiver of Right to Counsel

G.S. 7A-457(a) provides for written waiver of an indigent's right to in-court representation by counsel if the indigent has been informed of his right and the court:

finds of record that at the time of waiver the indigent person acted with full awareness of his rights and of the consequences of the waiver. In making such a finding, the court shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the crime charged.

Once a person is told that he may not be imprisoned, absent waiver, unless furnished counsel even upon a guilty plea, there may be little inducement to a defendant to execute a waiver of counsel. If a defendant suspects counsel is not readily available he may hold out in the hope that the need to clear the docket will force the calling of his case without waiver--and thus insulate him from any possibility of imprisonment. If counsel is readily available, why should the defendant not utilize his services? There may be a middle ground, though, in which furnishing counsel will result in some (but not unconstitutionally long) delay; impatient defendants may prefer to waive and get the matter over with--either by guilty plea or immediate trial to the judge.

One other point might be made. Although G.S. 7A-457(a) is written in terms of waiver of counsel by indigents, the Equal Protection Clause of the Constitution probably requires that waiver of counsel by a non-indigent be surrounded by a similar degree of protection of constitutional rights. Waiver of right to counsel must in all cases be knowing and

intelligent.

Where Defendant Cannot Pay Fine or Costs

Assume that a minor misdemeanor who turns out to be indigent is convicted, fined or taxed with costs, or both--and the defendant states that he cannot pay. It is clear that he may not be imprisoned at this point. Tate v. Short, 401 U.S. 395 (1971) indicated that an indigent defendant may not be automatically imprisoned for failure to pay fine or costs, but rather specifically seemed to approve imprisonment as a last resort if the defendant was given time to come in and pay and failed to do so. The problem, though, is that G.S. 6-45 and 6-46 were repealed in the wake of Tate v. Short. G.S. 6-47 and 6-48 seem to be limited to cases in which there are sureties to secure the fine and costs. Thus there may be no statutory power granted judges to impose any subsequent imprisonment, unless the judge found the nonpayment to be sufficiently wilful to come under his contempt powers.

Even if the hurdle of State law is overcome, there is still the further question whether the prophylactic rule of Argersinger undercuts the statements made in Tate v. Short. Would subsequent imprisonment for wilful refusal to pay fine and costs, when such penalty was imposed on an indigent in a trial without counsel, constitute a separate proceeding? Or would the imprisonment relate back to the original trial so as to be invalid? This appears to be a close question that only the Supreme Court of the United States can finally answer.

Retroactivity of the Ruling

The Solicitor General of the United States appeared as amicus curiae and argued against applying any extension of the right-to-counsel rule

retroactively because of the dislocations to the state systems of criminal justice that would result. The opinion of the Court does not discuss the matter at all, and Justice Powell's concurring opinion intimates no views on the merits. This is theoretically another very close question, but the practical answer is that unless the Court takes the opportunity to express an opinion on the matter within the very short period remaining before the summer recess there will be no real need for a decision. The various state courts will have handled the matter in one way or another. The opinion will affect only persons not appealing who have received sentences of six months or less. Before many people can successfully go through the postconviction procedure, such a short sentence may be served. In any event, the postconviction procedure would only win a new trial with counsel. Even with credit for time served under the old sentence, it may not be worth it to many prisoners to petition for a new trial on account of Argersinger.

APPENDIX VII

Correspondence concerning Indexing of General Statutes

STATE OF NORTH CAROLINA
 LEGISLATIVE RESEARCH COMMISSION
 STATE LEGISLATIVE BUILDING
 RALEIGH 27611

CO CHAIRMAN:
 GORDON P. ALLEN
 PRESIDENT PRO TEMPORE, SENATE

MEMBERS:
 SEN. LAMAR GUDGER
 SEN. F. O'NEIL JONES
 SEN. CHARLES H. LARKINS, JR.
 SEN. WILLIAM W. STATON
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 SPEAKER, HOUSE OF REPRESENTATIVE

MEMBERS:
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 REP. ERNEST B. MESSER
 REP. WILLIAM R. ROBERTSON, JR.
 REP. CARL J. STEWART, JR.
 REP. WILLIS P. WHICHARD

September 28, 1972

The Michie Company
 Law Publishers
 Charlottesville, Virginia

Dear Sirs:

Senate Resolution 964 directed the Legislative Research Commission to "study the laws of the State relating to motor vehicles and to recommend such revision of Chapter 20 as it may deem advisable, to the end that such laws shall be more cohesive, more easily understood and less ambiguous..." A Committee has been appointed to undertake the study.

As part of the Committee's examination of North Carolina's Motor Vehicle laws, the State's Judges and Solicitors were asked to give their "advice regarding particular problems encountered in interpreting and applying the provisions of Chapter 20." A number of the responding Judges and Solicitors suggested that better indexing is a needed improvement.

Since the General Statute index is the responsibility of the Michie Company (with the N. C. Department of Justice), we are enclosing abstracts of the comments on indexing received by the Committee.

Yours truly,

Willis P. Whichard, Chairman
 Committee on Motor Vehicles

WPW/jl

enc.

cc: Division of Legislative Drafting and Codification
 of Statutes
 North Carolina Department of Justice

NORTH CAROLINA LEGISLATIVE RESEARCH COMMISSION

Abstracts of Comments Concerning
Indexing of General Statutes
Chapter 20.

"I would like to suggest that your committee give serious consideration to the rearrangement of chapter 20 in some logical fashion and to the compilation of a new descriptive word index. Because of the patchwork manner in which the chapter is organized and the inadequacy of the word index, attorneys, law enforcement officers, and judges are finding it difficult to locate all provisions relating to a specific violation. Often during the course of a trial, I have requested from law enforcement officers information relative to the statute under which a defendant is charged. In a surprisingly large number of cases, neither the officer, the solicitor, nor I can quickly locate the statutory provision."

"The most serious criticism I have of the statutes as they are presently compiled is the apparent "shot gun" method in which they are placed in the statutes. Maybe this is more of a criticism of the indexing system used by Michie Publishing Company, but it is very difficult many times to find the specific statute for which you are searching."

"The grievousness of the situation is that needless hours are spent trying to find the law. Do you know of any reason why we should not have a descriptive word index listing words in alphabetical order?"

"Indexing. I see this as the crying need in Chapter 20. It is almost impossible to find any particular section unless you already know where it is. Often the bold-face heading bears little if any resemblance to the contents of the section. I realize the Michie company is responsible for most of this and there may be little you can do about it; further, this is a common problem throughout our general statutes. But I would mention old Chapter 18 and new Chapter 18 as examples of improvement. As an example, I don't think anyone would ever find Failing to Reduce Speed to Avoid an Accident if he didn't already know that is buried in Section 20-141(c), whose heading is "Speed Restrictions". It seems to me the best way to approach this would be a commonsense individual grouping of common offenses by their common names."

Law Publishers Since 1897



THE
MICHE COMPANY

Vice President and Secretary: P.O. Box 57: Charlottesville, Virginia 22902: Phone (703) 233-8021

October 6, 1972

Hon. Willis P. Whichard, Chairman
Committee on Motor Vehicles
Legislative Research Commission
State of North Carolina
State Legislative Bldg.
Raleigh, N.C. 27611

Dear Mr. Whichard:

I thank you very much for your letter of September 28th and enclosures with regard to the study by your Committee of Chapter 20 of the GENERAL STATUTES. I appreciate your thoughtfulness in sending to me an abstract of comments received by your Committee from judges and solicitors.

I think some of the comments are most pertinent and I must agree that I think the codification of material and general arrangement in Chapter 20 leave a lot to be desired. This I might add is also true of other chapters in the GENERAL STATUTES. However, I feel that great improvements have been made with respect to the codification and arrangement in some of the titles which have been revised in recent years. If I may make one comment concerning subsequent revisions, I would recommend that sections be as short and concise as possible. I feel that many sections in present Chapter 20 are unduly long and cumbersome. Shorter sections permit more adequate catchlining and also greatly facilitate the indexing process.

We certainly want to make every possible improvement in the GENERAL STATUTES and appreciate having called to our attention any difficulty in locating material in our index. Information such as contained in the last paragraph of comments concerning reducing speed to avoid accident is most helpful and we will add appropriate references in the index to facilitate the location of this provision. Wherever difficulty is experienced in finding a particular provision, we would appreciate having this brought to our attention and we will gladly try to add appropriate references to remedy this situation.

Thanking you and with all good wishes, I am

Very truly yours,

S. G. Alrich

SGA/p

cc: Mrs. Christine Denson
Department of Justice



ROBERT MORGAN
ATTORNEY GENERAL

State of North Carolina
Department of Justice

P. O. Box 629
RALEIGH
27602

10 October 1972

Mr. Willis P. Whichard, Chairman
Committee on Motor Vehicles
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

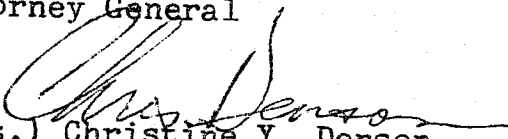
Dear Bill:

We very much appreciate the Committee's suggestions regarding Chapter 20 and hope that a recodification of it will be undertaken. I certainly hope that the Attorney General's Office will be involved in this recodification since I am sure there is much to be contributed by the several attorneys in our Office who constantly work with this material.

Best wishes.

Sincerely,

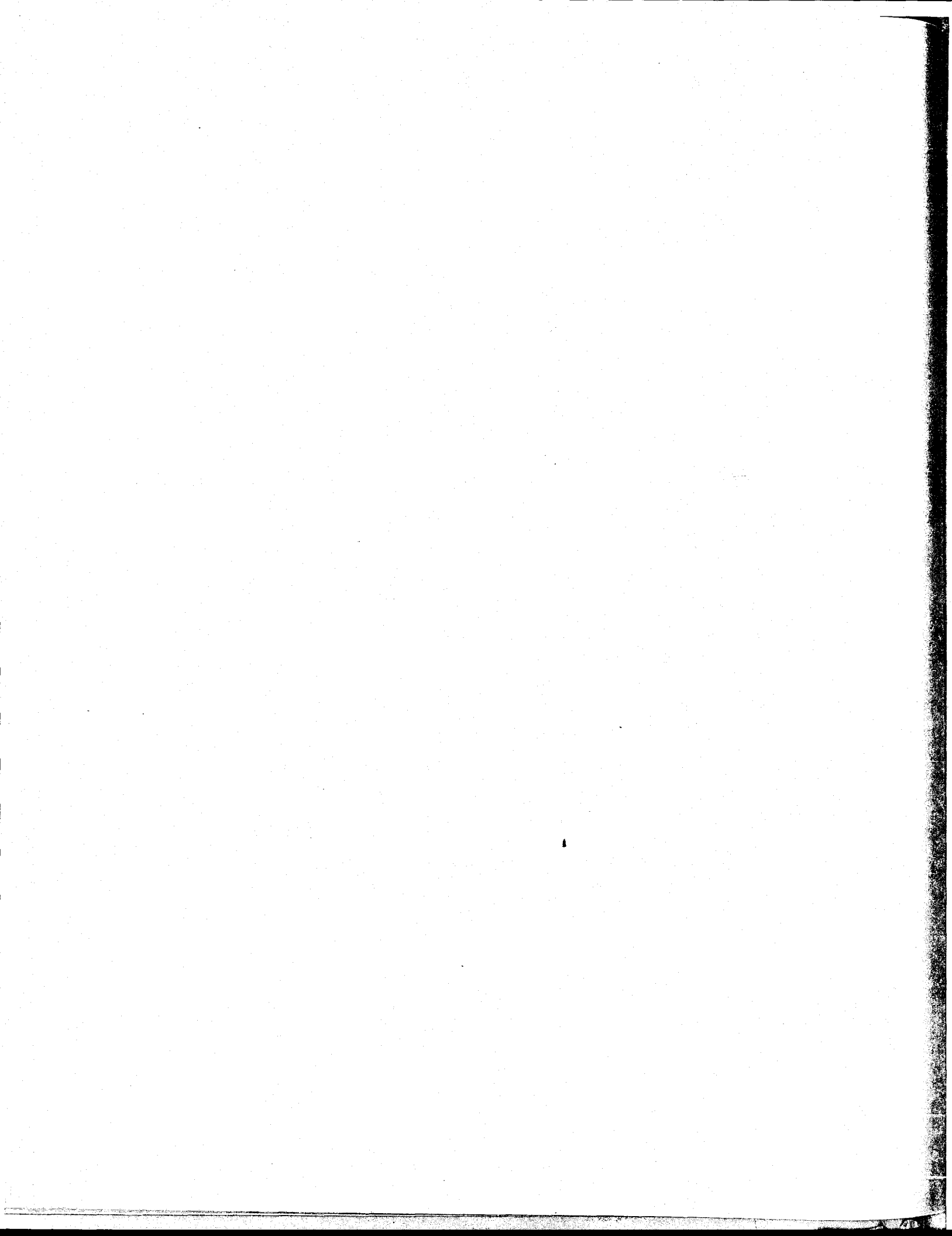
ROBERT MORGAN
Attorney General


(Mrs.) Christine Y. Denson
Assistant Attorney General

CYD-kd

APPENDIX VIII

Materials on a Non-Resident
Violator Compact



16 May 1972

Mr. Ejner J. Johnson
Administrator
Motor Vehicle Administration
6601 Ritchie Highway, N. E.
Glen Burnie, Maryland 21061

Dear Ejner:

I recall that at our conference in Annapolis several months ago there was a discussion of a reciprocal procedure that Maryland, Virginia, District of Columbia, and possibly other jurisdictions are using in traffic violations for non-residents to eliminate the necessity of taking the driver to court for the purpose of posting bond.

We have a legislative research committee now studying the motor vehicle laws of this State, and I would appreciate your sending me a copy of your law and the forms used in connection therewith so that I might submit it to them for consideration.

It was nice being with you and your charming wife at the recent AAMVA Executive Committee Meeting and I hope that all your investments turned out profitably.

Kindest regards.

Sincerely,

JOE W. CANNETT

JWC:rd

STATE MOTOR VEHICLE ADMINISTRATION

VIII - 2

6601 RITCHIE HIGHWAY, N.E.

GLEN BURNIE, MARYLAND 21061



HARRY R. HUGHES
SECRETARY

EJNER J. JOHNSON
ADMINISTRATOR

May 23, 1972

Honorable Joe W. Garrett
Commissioner
Department of Motor Vehicles
1100 New Bern Avenue
Raleigh, North Carolina 27611



Dear Joe:

In response to your letter of May 16, 1972, I am enclosing a copy of the Non-Resident Violator Compact between Maryland and Virginia and Maryland and the District of Columbia.

Curiously, on the day your letter arrived Governor Mandel's office contacted me requesting information on the same subject. It seems that the Mid-Atlantic Governors Conference is interested in this matter and a discussion was held on May 19, 1972, in Virginia. Tom Widenman attended and I am sure that Tom will be in a position to brief you on developments when he sees you in Florida in a few weeks.

If you need any additional information please let me know.

With kindest personal regards, I am

Sincerely yours,

Administrator

EJG:bb
Enclosure

NON-RESIDENT VIOLATOR COMPACT

ARTICLE I

Findings and Declaration of Policy

(a) The party States find that:

(1) Under present procedure, a non-resident motorist who is arrested in a jurisdiction other than such non-resident's home jurisdiction must either post collateral or bond to secure appearance for trial at some later date, or, if he be unable to post such collateral or bond, he is taken into custody until such collateral or bond is posted. The purpose of this requirement is to obviate the difficulty of ensuring compliance with the terms of a traffic citation by the non-resident who, if permitted to continue on his way after receiving such citation, could return to his home jurisdiction and disregard with impunity his duty under the terms of such citation.

(2) Motorists who are arrested in their home jurisdictions are permitted, with a few exceptions involving the most serious traffic violations, to accept a citation from the arresting officer at the scene of arrest with instructions to appear at a later date at a proper police station for the purpose of posting collateral or a bond or, in the alternative, to appear at an appropriate court for trial, and to continue on their way immediately after receiving such citation.

(3) In many of the arrests described in paragraph (1) above, great inconvenience and, at times, great hardship is imposed on the non-resident who is unable at the time of arrest to post collateral or to furnish a bond, thus compelling the non-resident to remain in custody for a significant length of time.

(4) In the vast majority of such arrests, the motorist is involved in traffic offenses which are considered as being less serious than the more flagrant violations described below, and when committed in the home jurisdiction of the motorist, the latter may be issued a citation and allowed to proceed without further detention as outlined in paragraph (2).

(5) The more serious traffic offenses, the commission of which requires the arresting officer to detain the motorist and requires the motorist to post collateral or bond, whether such motorist is a resident or nonresident, may be classified as (a) those in which the licensing authority must suspend or revoke without discretion following conviction or forfeiture; and (b) those which for statutory or policy reasons deny to the motorist the right to accept a citation at the time of arrest with no further detention.

(b) It is the policy of each of the party States to:

(1) Promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make possible reciprocal recognition of the right of motorists of the party States to accept a citation without further detention by the arresting officer in all traffic violation cases in which such procedure is permitted, whether the motorist is a resident or a non-resident of the State in which the arrest is made.

(3) Consider an operator who ignores or refuses a citation from a party State to be an unfit or irresponsible person to hold the driving privilege.

ARTICLE II

Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Citation" shall mean any citation, summons, ticket, or other document issued by an arresting officer for violation of a traffic law, ordinance, rule or regulation, ordering the arrested motorist to appear.

(c) "Home Jurisdiction" shall mean the State which has issued and has the power to suspend or revoke the use of the license to operate a motor vehicle.

(d) "License" shall mean any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of a party State including -

(1) any temporary or learner's permit;

(2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(3) any nonresident's operating privilege conferred upon a nonresident of a party State pertaining to the operation by such person of a motor vehicle in such party State.

(e) "Collateral" or "bond" shall mean any cash or other security deposited to secure an appearance for trial following a

citation by an arresting officer for violation of a traffic law, ordinance, rule or regulation.

(f) "Personal Recognizance" shall mean a signed agreement by an arrested motorist that he will comply with the terms of the citation served upon him at the time of arrest.

III

Procedure by Arresting Officers in Certain Traffic Violations

(a) A police officer making an arrest for a traffic violation shall issue a citation as appropriate to all motorists who are residents of the party States and shall not, subject to the exceptions noted in paragraph (b) of this Article, require such motorist to post collateral or bond to secure appearance for trial, but shall accept such motorists' personal recognizance that they will comply with the terms of such citation.

(b) No motorist shall be entitled to receive a citation under the terms of paragraph (a) of this Article nor shall any police officer issue such citation under the same terms in the event the offense for which the citation be issued shall be one of the following: (a) an offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by law; or (b) an offense, the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.

(c) Upon the failure of any non-resident to comply with the terms of a traffic citation, the arresting officer shall obtain a warrant for arrest and shall report this fact to the licensing authority of the State in which the arrest was made. Such report shall clearly identify the person arrested; describe the violation, specifying the section of the statute, code or ordinance violated; shall indicate the location of the offense; description of vehicle involved; registration number; and such report shall be signed by the arresting officer.

ARTICLE IV

Procedure by Licensing Authorities

(a) Upon receipt of an arresting officer's report as described in Article III, the licensing authority of the State in which the arrest was made shall transmit a certified copy of the record of such report to the official in charge of the issuance of licenses in the State in which the nonresident resides.

(b) Upon receipt of a certification of noncompliance from the licensing authority of the State in which the arrest was made, the licensing authority of the State in which the motorist resides, shall immediately initiate suspension proceedings against such motorist. The order of suspension shall indicate the reason for the order, and shall notify the motorist that his license shall remain suspended until he has furnished evidence satisfactory to the authority issuing such order that he has fully complied with the terms of the citation which was the basis for the suspension order.

(c) The provisions of this Article shall be applicable only to a certification from a State which has made provision for the issuance of a citation to and without further detention of a nonresident motorist of the State to which the certification has been transmitted following an arrest for the same traffic offense.

(d) A copy of any suspension order issued hereunder shall be furnished to the licensing authority of the State in which the arrest was made.

(e) If the laws of a party State do not provide for offenses or violations denominated or described in precisely the words employed in the State to which a certification is transmitted, the party States shall construe the denominations and descriptions appearing the laws of such States as being applicable to and identifying those offenses or violations of a substantially similar nature.

ARTICLE V

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party State to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party State and a non-party State.

ARTICLE VI

Compact administrator and Interchange of Information

(a) The motor vehicle administrator of each party State shall be the administrator of this compact for his State. The

administrators acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party State shall furnish to the administrator of each other party State any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VII

Entry Into Compact and Withdrawal

(a) This compact shall enter into force and become effective as to any State when it has been adopted by the official or officials having authority to do so, or when it has been enacted into law, wherever required.

(b) Any party State may withdraw from this compact by giving notice to the executive head of the other party States, but no such withdrawal shall take effect until three (3) months after the executive head of the withdrawing State has given such notice. No withdrawal shall affect the validity or applicability by the licensing authorities of States remaining party to the compact.

ARTICLE VIII

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State party thereto, the compact shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

This agreement, known as the Traffic Summons Reciprocal Agreement, is currently in effect between Maryland and Virginia and Maryland and the District of Columbia.



State of North Carolina
Department of Motor Vehicles

RECEIVED
OCT 27 1972

E. W. GARRETT
COMMISSIONER

Raleigh 27602

LEGISLATIVE SERVICES OFFICE

JOHN N. LOCKAMY
J. M. PENNY
ASST. COMMISSIONERS

26 October 1972

Mr. Thomas E. Wideman, Director
Vehicle Safety & Reciprocity
State Motor Vehicle Administration
6601 Ritchie Highway, N. E.
Glen Burnie, Maryland 21061

Dear Tom:

This will acknowledge receipt of your letter enclosing copies of a Non-Resident Violator Compact which becomes effective October 20, 1972 for the states of Maryland, Delaware and New Jersey.

Unfortunately, at the present time we do not have a law authorizing us to enter into such a compact, but I am glad to report that a Legislative Research Commission which has been studying revisions in the Motor Vehicle Laws will recommend such a law to the 1973 General Assembly. Should this law be enacted, I can assure you that we will give serious consideration to joining with you in this compact.

I notice you indicate that you have a different compact with Virginia and the District of Columbia. I would be interested in knowing why you have two kinds rather than having all the states in the same one.

Kindest regards.

Sincerely,


E. W. GARRETT

JWG:md

bc: Mr. William W. Melvin
bc: Mr. William H. Potter, Jr.

APPENDIX "B"

RESOLUTION ADOPTING THE NON-RESIDENT VIOLATOR COMPACT

WHEREAS, The NON-RESIDENT VIOLATOR COMPACT was formed to promote compliance with the laws relating to the operating of motor vehicles in jurisdictions other than a home jurisdiction.

WHEREAS, the Compact makes possible the reciprocal recognition of the right of motorists of the party jurisdictions to accept a citation for certain traffic violations whether the motorist is a resident or non-resident of the jurisdiction in which the arrest is made, and

WHEREAS, the Compact maximizes effective utilization of law enforcement personnel.

NOW, THEREFORE, in consideration of the mutual and reciprocal benefits to flow therefrom in accordance with the laws of this State, the _____

on behalf of the State of _____
does hereby ratify the "NON-RESIDENT VIOLATOR COMPACT."

IN TESTIMONY WHEREOF, the State of _____
acting through its duly authorized officials, has caused this resolution to be adopted to make the State of _____ a member of and a party to the compact herein mentioned, subject to the endorsement by all jurisdictions now party to the compact.

Adopted this _____ day of _____, 19 _____.

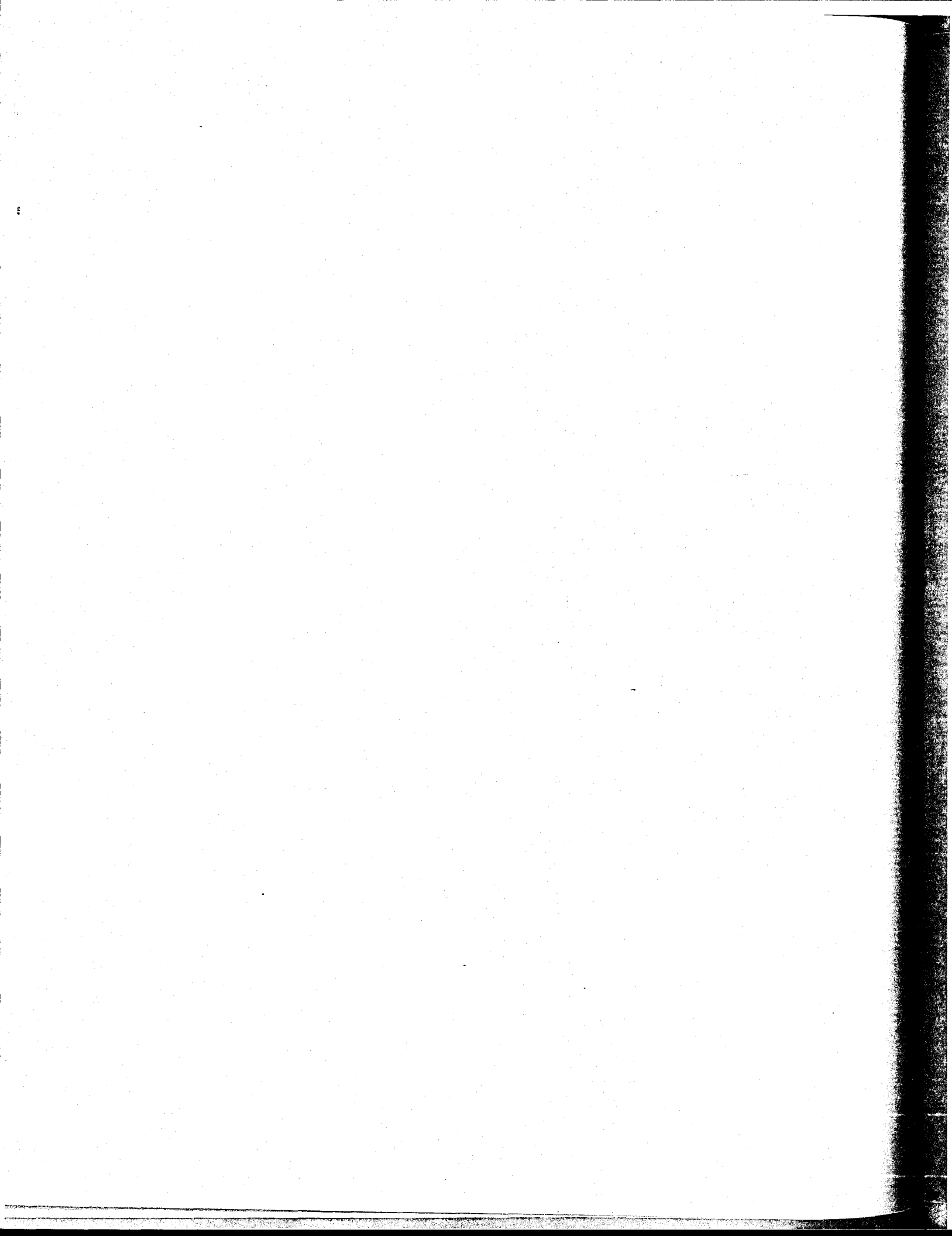
For the State of _____

By: _____	_____
SIGNATURE	TITLE
_____	_____
SIGNATURE	TITLE
_____	_____
SIGNATURE	TITLE

ENDORSEMENT: For the State of _____

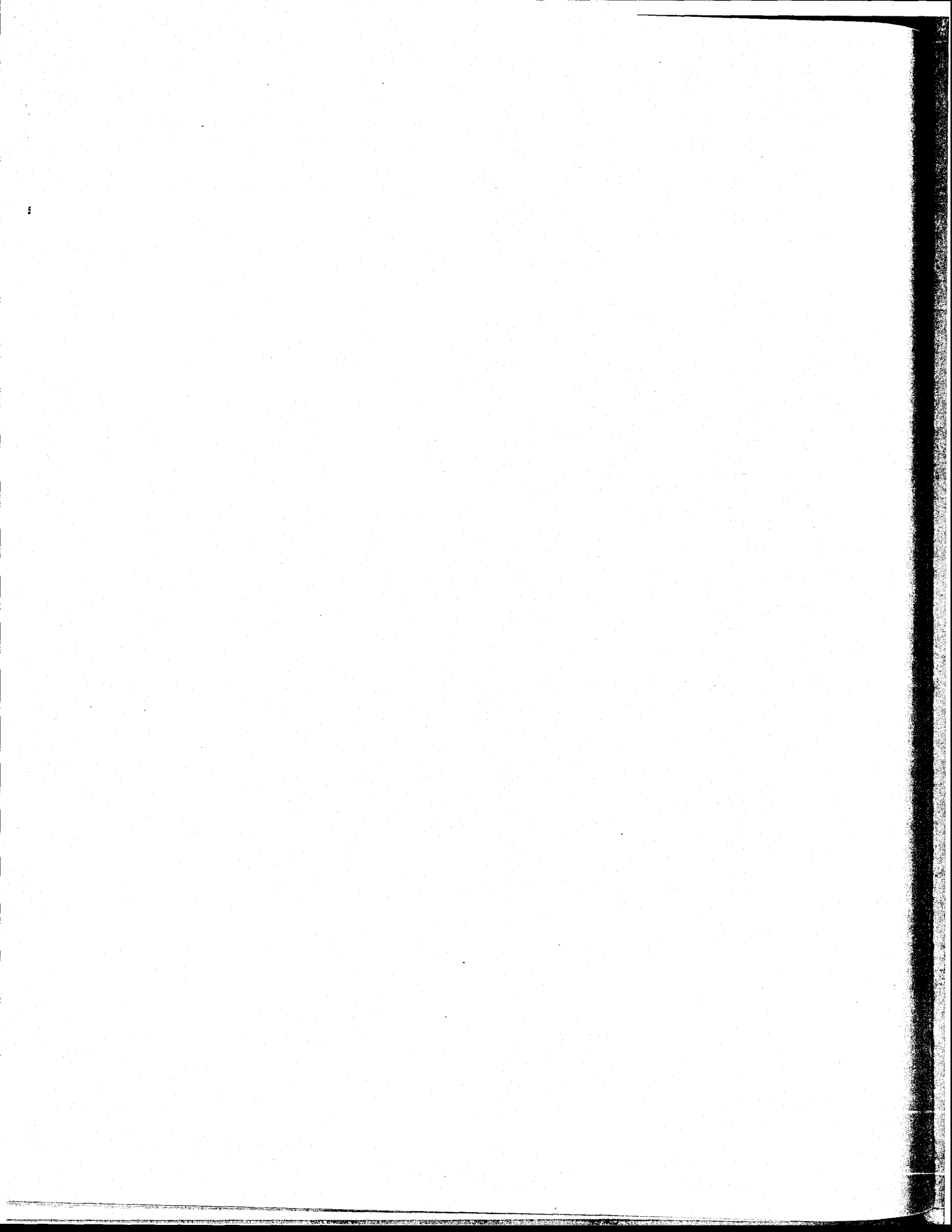
As required by Section (b) of Article VII of the NON-RESIDENT VIOLATOR COMPACT, this Resolution of Ratification is hereby endorsed on this _____ day of _____ 19 _____.

By: _____	_____
SIGNATURE	TITLE
_____	_____
SIGNATURE	TITLE



APPENDIX IX

Materials on Unauthorized Use
of a Conveyance



IX - 1

INSTITUTE OF GOVERNMENT

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL 27514

Memorandum

TO: L.R.C. Committee on Motor Vehicle Law

FROM: Dexter Watts

DATE: July 11, 1972

SUBJECT: Making G.S. 20-105 a Lesser-Included Offense of Larceny

The following statutory draft is submitted pursuant to decisions made by the Committee on July 6, 1972:

Repeal G.S. 20-105 and add a new G.S. 14-82.1 to read as follows:

"§ 14-82.1. Unauthorized use of a conveyance; punishments; defense if taking in good faith; offense a lesser-included offense of larceny; definition of 'owner.'--(a) A person is guilty of an offense if, knowing that he does not have the consent of the owner, he takes, operates, or exercises control over an aircraft, motorboat, motor vehicle, or other motor-propelled conveyance of another.

"(b) It is a defense to a prosecution under this section that the person charged reasonably believed that the owner would have consented had he known of the conduct on which the prosecution was based.

"(c) Unauthorized use of an aircraft is a felony punishable by a fine, imprisonment not to exceed five years, or both, in the discretion of the court. All other unauthorized use of a conveyance

is a misdemeanor punishable by a fine, imprisonment not to exceed two years, or both, in the discretion of the court.

"(d) When it is factually appropriate to do so, an offense under this section may be treated as a lesser-included offense of the offense of larceny of a conveyance.

"(e) As used in this section 'owner' means any person or a government with an interest in property such that it is 'property of another' as far as the person accused of the offense is concerned."

NOTES

After some thought given to placement, it was determined that the new provision would best follow G.S. 14-82, which deals with temporary larceny of horses, geldings, mares, and mules. G.S. 14-72 was not deemed an appropriate location as it dealt with reductions from felony to misdemeanor larceny based on value of the property stolen, whereas unauthorized use of a vehicle is a different crime than larceny.

In drafting the new unauthorized use section, it was thought best to follow, in general, the model provisions of the Study Draft of a New Federal Criminal Code of the National Commission on Reform of Federal Criminal Laws. G.S. 20-105 applies to all vehicles and not just motor vehicles; the Study Draft followed here applies only to motor-propelled conveyances but includes all types of conveyances.

Although following the Study Draft resulted in some technical change in the elements of the offense, it is essentially the same type of crime as prohibited under G.S. 20-105. The provision in G.S. 20-105 relating to accomplices was omitted as unnecessary; it merely restates the common

law. Another portion of G.S. 20-105 negating certain presumptions or implications concerning consent was omitted as not being necessary, but opinions may differ on this point. If deemed desirable, the Committee could insert the following subsection (e) and renumber the definitions subsection as subsection (f):

"(e) Consent may not be presumed or implied because of the consent of the owner on a previous occasion to the taking, operating, or exercising control of a conveyance given to the person charged or to another person."

To prevent persons whose convictions are not final from being released from guilt under G.S. 20-105, it would be desirable for the bill repealing G.S. 20-105 and enacting new G.S. 14-82.1 to contain a specific savings clause. Such a clause might read as follows:

"The provisions of this act [repealing G.S. 20-105 and enacting G.S. 14-82.1] take effect January 1, 1973. The prosecution of any offense under G.S. 20-105 occurring prior to the effective date of this act shall not be affected in any way by the repeal of such section."