THE JUVENILE LAW STUDY COMMISSION

REPORT TO THE GOVERNOR AND THE 1993 GENERAL ASSEMBLY OF NORTH CAROLINA

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JUVENILE LAW STUDY COMMISSION

REPORT

TO THE GOVERNOR AND THE 1993 GENERAL ASSEMBLY:

The Juvenile Law Study Commission respectfully submits this report to the Governor and to the 1993 General Assembly. This report details the work of the commission from adjournment of the 1990 regular session through the convening of the 1993 regular session and is made pursuant to G.S. 7A-741 which provides:

> It shall be the duty of the Commission to make continuing studies of the law, both statutory and judicial, as it pertains to juveniles, of agency services available to juveniles and their families, and of any other matters the Commission identifies as being of importance to State consideration of juveniles. The Commission shall report to the Governor and the General Assembly on or before the first day of each full session. The report shall be in writing and shall set forth the Commission's findings, conclusions, and recommendations including any proposed legislation.

The Commission was initially chaired by Representative James Morgan of High Point, who had been floor leader for the Juvenile Code Revision Bill in the House of Representatives. Representative Morgan served as chair until 1984. Representative Anne Barnes of Chapel Hill succeeded him through January 1987. Judge Sherry Alloway of Greensboro chaired the Commission from 1987 to 1989. Representative Paul Stam, Jr., of Apex, served as Chairman of the Commission from November 6, 1989 to November 30, 1992. On November 30, 1992, I was appointed Chairman. The current members and their appointment categories are in the Appendix.

The Commission has met numerous times since the adjournment of the 1991 session. During the 1991-1992 legislative session, it met to consider bills that affected juvenile law and services. The commission initiated legislation as a result of its continuing study of juvenile law and services. When the Commission studied legislation before it for revision, it conveyed the results of its study to the standing legislative committee that was considering it. The Commission and its members stand ready to be of assistance to the members and committees of the 1993 General Assembly.

Respectfully submitted,

William Neely, Chairman
Juvenile Law Study Commission

BACKGROUND OF THE 1979 JUVENILE CODE REVISION

Juvenile justice in the United States is usually described as progressing through several major reforms. The opening of the New York House of Refuse in 1825 constituted the first separate juvenile institution for child offenders and neglected children. Massachusetts provided separate court hearings for juvenile offenders as early as 1870 in Boston and separate juvenile records in 1877.

New York enacted legislation to prohibit incarceration of children in prisons in 1877. In 1898 Rhode Island provided separate pre-hearing detention of children in facilities other than jails. Then, in 1899, Illinois embodied in legislation the various concepts of reform and proposed what became a model for the development of a juvenile court.

The evolution of a separate court for juveniles offering informal procedures was seen as a special effort to protect juvenile offenders from the stigma of a criminal conviction and to provide for treatment or rehabilitation based on an evolution of the needs of the child.

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[1] This information is taken from the 1979 Report of the Juvenile Code Revision Committee, on file in the Legislative Library, pp. 6-10.

After 1899, both delinquent and predelinquent children came within the jurisdiction of the court. Under the doctrine of parens patriae, the State was allowed to intervene as a substitute parent in certain situations.

The judge conducted an informal, non-adversarial hearing. The judge exercised full discretion to determine an outcome that was in the best interests of the child and a disposition to rehabilitate the child by changing the pattern of the child's behavior that had been found unacceptable. Notions of procedural due process were abandoned in the spirit of social reform.

The North Carolina Constitution of 1868 provided a framework for a juvenile court in North Carolina. It acknowledged a "Christian and civilized" state's duty to provide for the "poor, the unfortunate and the orphan...." It provided for the establishment of houses of refuge, houses of correction, and orphanages. Children were confined in the state penitentiary from its establishment until 1909. Mason P. Thomas, Jr., in Juvenile Corrections and Juvenile Jurisdiction (1972), describes the use of executive clemency by North Carolina governors to remove children from prison:

> The first available list of pardons shows that Governor Holden pardoned a ten-year-old in 1869 who had been sentenced to prison for a year for assault. Another case involved a youth who was sentenced to three years for stealing a goose valued at ten cents. These child prisoners varied in age from 8 to 20. The legislative documents containing lists of pardons by various governors show that more than 150 youthful prisoners were pardoned between 1869 and 1909 in order to remove them from adult prisons, particularly Central Prison in Raleigh.

Support for a separate juvenile correctional system gained momentum until 1907 when Stonewall Jackson Manual Training and Industrial School was authorized. The school was opened in 1909 to accept children under sixteen years of age who were convicted of violating a criminal offense.

The first legislation providing special treatment for youthful offenders in the courts came in 1915. The Probation Courts Act (Public Laws 1915, Chapter 222), which applied to youthful offenders who were eighteen years old or younger, introduced new concepts into North Carolina law including juvenile delinquency, use of probation, closed hearing for juveniles, and separate juvenile records. These concepts were subsequently incorporated into the juvenile court legislation of 1919.

The National Child Labor Committee had studied conditions in the state affecting children and the report that followed was published in 1918, entitled Child Welfare in North Carolina. The 1919 General Assembly enacted the proposals as recommended except that the Legislation included children under the age of sixteen rather than eighteen as suggested in the report.

The clerk of superior court was given jurisdiction over children less than sixteen years old who came within these categories: delinquent, truant, unruly, wayward, misdirected, disobedient to parents or beyond their control or who is in danger of becoming so, neglected, dependent upon public support, destitute, homeless, abandoned, or whose custody is subject to controversy. The categories were not defined by the statute. Once jurisdiction attached, it continued until the child was twenty-one years of age. The clerk, as juvenile judge, was given discretionary authority to exclude the general public from juvenile hearings. Separate juvenile records that were to be withheld from public inspection were to be maintained. A juvenile petition initiated a juvenile case and notice was by summons. See former N.C.G.S. s 110-29 (1965 Replacement). Children were to be held separate from adult offenders in local jails. See former N.C.G.S. s 110-30 (1966 Replacement). The county welfare department was to provide juvenile probation services, and appropriate conditions of juvenile probation were specified. See former N.C.G.S. s 110-31 through 110-33 (1966 Replacement). A statute applicable to adults who contributed to the delinquency and neglect of children was included. See former N.C.G.S. s 110-30 (1969 Replacement). Appeals were to Superior Court. See former N.C.G.S. s 110-40 (1966 Replacement). In upholding the constitutionality of the state's juvenile court law, the North Carolina Supreme Court relied on the doctrine of parens patriae (State v. Burnett, 179 N.C. 735 (1920)).

The year 1967 marked a new turning point in juvenile justice. Both the President's Task Force Report on Juvenile Delinquency and Youth and Crime and In re Gault, 387 U.S. 1 (1967), challenged the notion that the best intentioned judge, given unlimited discretion, could achieve the goals of juvenile courts. In describing the juvenile justice system, the report said, "It has not succeeded significantly in rehabilitating of juvenile criminality, or in bringing justice and compassion to the child offender."

The Gault case began to define the procedural right of juveniles. Earlier in Kent v. United States, 383 U.S. 541 (1966), the United States Supreme Court held that the juvenile was afforded "neither the protections afforded to adults nor the solicitors and regenerative treatment postulated for children."

The line of cases after Gault perpetuated the dualistic nature of the Court's decision. Juveniles were entitled to some procedural protections and not others. Although they could be

deprived of their liberty as a result of juvenile court intervention, the basis for intervention was broadly stated in the categories not defind.

The Juvenile Code Revision Committee was established by the General Assembly as an adjunct Committee of the Governor's Crime Commission, authorized to examine legislation and programs of other states, the Juvenile Justice Standards of the Institute of Judicial Administration and the American Bar Association, and the recommendations of other study commissions and to present to the 1979 General Assembly a comprehensive report outlining a coordinated working approach to North Carolina's juvenile justice system, including a draft revision of juvenile law that would recodify the statutes dealing with juvenile law into one, unified code.

The Committee made its written report to the 1979 General Assembly. Its proposed Juvenile Code Revision became the substance of N.C.G.S. ss 7A-516 through -744. The Committee's major substantive concerns involved status offenders, the school's role in delinquency prevention, child abuse and neglect, coordination of juvenile justice services at the State and local level intake services, immediate custody and detention, corrections, jury trials, law enforcement, and certification and training of judges. Its major recommendations follow:

(1) The status offenders (i.e. truants, runaways, undisciplined) be diverted at intake to programs addressing their needs;

(2) That, when jurisdiction of the court is exercised over the status offender, confinement in secure custody be for no longer than twenty-four hours (now, seventy-two for runaways), and that commitment to a training school be prohibited;

(3) That sanctions against uncooperative parents be strengthened;

(4) That the age limit for jurisdiction over undisciplined juveniles be lowered to include only juveniles under sixteen years of age;

(5) That parents be held more accountable for their child's school attendance;

(6) That all complaints alleging abuse, neglect, or dependency be referred to the Director of the county Department of Social Services for preliminary screening by that agency;

(7) That a law enforcement officer or protective services worker be empowered to take a juvenile into temporary custody without a court order if there are reasonable grounds to believe that a juvenile is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order;

(8) That the juvenile alleged to have committed certain serious felony offenses be automatically referred to court;

(9) That the intake counselor perform no adversarial functions and that any information gathered by the intake counselor be privileged until after adjudication;

(10) That intake services be available seven days a week and twenty-four hours a day;

(11) That the chief district court judge be empowered to delegate his authority to issue secure and nonsecure custody orders to another district court judge, or to intake counselors;

(12) That, when this delegation has occurred, and the delegee has ordered placement in secure or nonsecure custody, a hearing to determine the need for continued custody be held on the day of the next regularly scheduled session of district court in the district, but in no case later than five days;

(13) That no juvenile be detained in a holdover facility of a local jail after a date certain (finally set at July 1, 1984);

(14) That training schools and facilities be reexamined and restructured better to use existing resources and train juveniles in trouble;

(15) That a juvenile alleged to be delinquent be granted critical due process guarantees: the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right of discovery, and most other rights afforded adult offenders; (the legislature decided against the Committee's recommendation of right of trial by jury and also against the adult's right to bail and right of self-representation);

(16) That the Administrative Office of the Courts develop a plan for certification of judges qualified to hear juvenile cases and for annual training for juvenile judges.

For a detailed, section by section analysis of the1 1979 Juvenile Code passed by the legislature, see North Carolina Legislation 1979: A Summary of Legislation in the 1979 General Assembly of Interest to North Carolina Public Officials, Institute of Government, pp. 121-136.

A. Protecting Children - Introduction

The preeminent mark of a civilized society is that it protects its children. Many threats to children are cultural and cannot be completely addressed by law. There are however some threats that are amenable to correction. These threats are addressed in four bills.

- PROHIBIT THE COMMERCIAL DISTRIBUTION OF SADISTIC VIDEOS TO MINORS
- SAFE SCHOOLS
- AID ENDANGERED MINOR VICTIM
- JUVENILE PETITIONS/GUARDIAN AD LITEM

Tens of billions of dollars are spent to influence children through advertising and education. Influence is the purpose of these expenditures. The premise of these expenditures is that what a child sees or reads will affect that child's behavior. The Commission finds this premise to be true and therefore concludes that distribution to minors of ultra-sadistic videos affects the behavior of children and thus makes society more dangerous for children. Further research findings on a bill to prohibit the commercial distribution of sadistic videos to minors follows.

Schools are not as safe as they should be. Whatever the mission of a school, it should be a place of physical safety. The presence of firearms and other weapons on school premises threatens a child's safety and the ability of the schools to provide a conducive learning environment. The recommended bill addresses the problems of parents who do not take steps which are adequate to prevent their children from taking firearms to school. (It is already an offense for the child to do so. G.S. 14-269.2)

There is inadequate legal protection for minor children who are at risk of bodily injury from crime, intentional acts or accident. There are various statutes that require persons in different degrees of relationship to report child abuse or neglect. There is, however, no general duty or obligation of the adult population to protect children from known harm. The bill entitled "Aid endangered minor victim" is modeled after legislation enacted in Minnesota and Vermont that generally protects victims of crime by requiring action by witnesses. This bill proposed by the Commission differs from those bills by limiting its scope to the protection of minors and confines its liability to a limited civil recovery.

The Commission does not believe that enactment of this legislation will prevent all danger to children. However, it makes clear the proposition that adults in our society have a responsibility to attempt to protect children at risk.

The bill entitled "Juvenile Petition/Guardian ad litem" responds to various ambiguities in the law brought to the Commission's attention by representatives of the Guardian Ad Litem program. Interpretations vary from District to District of the responsibilities and authority of Guardians ad litem in their representation of juveniles. The purpose of the proposed bill is to clarify the law and to make practice across the state more uniform.

The legislation makes it clear that the Guardian ad litem should have notice and an opportunity to be heard before a motion to dismiss is granted and that the Guardian ad litem has standing to represent the juvenile in all actions in which the juvenile is a party. It further ensures that the Guardian ad litem will have access to certain information in voluntary placement cases.

RECOMMENDATIONS TO THE GOVERNOR AND THE 1993 GENERAL ASSEMBLY

I. Prohibit the Commercial Distribution of Sadistic Videos to Minors.

H 1169 from the 1989 General Assembly was the proposal reviewed by the Juvenile Law Study Commission. With certain modifications suggested by the Attorney General this bill is recommended by the Commission in order to restrict juvenile access to extremely violent videotapes.

During 1990 at four meetings, all open to the public, this issue was thoroughly debated. Supporters included Representative William Hurley, and The Junior League of North Carolina, with legal analysis from the Attorney General's Office. Opponents included the Motion Picture Association of America and the Retail Merchants Association.

On February 2, 1990, Assistant Attorney General Thomas J. Ziko presented a memorandum analyzing H1169 and recommending revisions now incorporated in the Draft supported by the Commission. In its present form the Attorney General believes the proposal passes constitutional muster. The proposed language is essentially analogous to United States Supreme Court requirements on other materials harmful to minors. The Attorney General's opinion is attachment pp 17-23. The analysis is adopted by the Commission.

Dr. Linnea Smith, a Chapel Hill psychiatrist, was asked by the Chairman of the Commission to gather research literature on the effect of video violence on minors. Her paper [26 pages and containing full citations] is available from the Commission. It focuses on the type of video violence that can be harmful and the impact such videos may have on minors. Because so much of the research includes sexualized violence which may not be legal obscenity her paper, includes the combination. Pertinent excerpts follow:

> " 'It is almost as though the audiences had become callous and, to give the excitement, the films had to be made more and more powerful in their arousal effects. Initially, stronger excitatory reactions grew weak or vanished entirely with repeated exposure to stimuli of a certain kind. This is known as "habituation." The possibility of habituation to sex and violence has significant social consequences. For one, it makes pointless the search for stronger and stronger arousers. But more important is its potential impact on real life behavior. If people become inured to violence from seeing much of it, they may be less likely to respond to real violence...' National Institute of Mental Health, Television and Behavior (1982) (p. 29). Smith at 3 quoting.

> After repeated violence viewing habituation to the arousal response and desensitization to the shocking and abhorrent have been well demonstrated in research, as well as in reality reflected by the changed in media over time, but the pursuit for stronger arousers continues while real-life violence is pervasive. Smith at 3.

"'There is general consensus that exposure to television violence can cause short-term arousal and modeling effects. The problem arises when laboratory results are extrapolated to the real world. Most social and behavioral scientists who have studied television accept the relationship between televised violence and subsequent aggressive behavior in viewers as positive and causal...

"A few recent studies, using longitudinal field designs and causal statistical models, offer evidence contrary to this conclusion....

"The emerging picture, then, is far from complete. We can expect more data to be collected using field designs and time-lag models as the causal hypothesis continues to be tested in the real world. This is a positive development, as even more televised violence becomes available to children via video recorders and cable television. (Bryant and Zillman, Perspectives on Media Effects (1984), pp.41-42). Smith at 3-4.

"In addition to the excessive violence contained within this entertainment form and equally, if not more disturbing, is the sexual sadism or sexually violent content prevalent in this material. There can be an actual fusion of sex and aggression where sexual gratification is obtained through causing physical pain, humiliation, degradation and escalating to extremely violent acts including rape, torture, mutilation and murder. Explicit and implicit messages to the targeted youthful audience within these frequent presentations of violence and rape as even fun and sexy, are that good sex is violent with the most thrilling orgasmic experiences involving sadistic torture, mutilation, and even death. Less obvious but potentially harmful, if not complete fusion, is the intertwining or juxtaposing of less explicit, but sexually suggestive behavior or sexual activity with aggressive behavior. Smith at 5-6.

"According to the authors of A Sourcebook on Pornography, of all the sexually explicit images and the ways in which pornography is presented, the video film is probably the most influential in terms of molding ideas in the minds of viewers. The medium combines dramatic images in motion with sound that can be more lifelike and credible than other materials. Videotapes are available in neighborhood family video stores instead of sleazy adult bookstores in crime and poverty-ridden sections of the city. Tapes are readily available to all ages where there is no stigma attached to obtaining them at low rental costs which also enables

more frequent consumption. Tapes can also appeal to those unable or not liking to read. Viewers can locate their favorite depictions of sexual activity and fast-forward and reverse to play repeatedly. Purchase or reproduction of the tapes is relatively easy for permanent retention. The tendency to masturbate to the material intensifies the fantasies which are powerfully reinforced by orgasm. The most vulnerable viewers, those who are more susceptible to attitudinal and/or behavioral influences, are the industry's targeted audience of children and adolescents. (Osanka, 1989). One researcher believes the first sexual experiences for some young adolescent males may be masturbation to horror/slasher movies at 'gross-out' parties. A concerned sociologist recently stated, 'Sex and violence have become inextricably confused in the minds of young people.' Smith at 6-7.

"'... the evidence lends some support to the conclusion that the consequences we have identified here do not vary with the extent of sexual explicitness so long as the violence is presented in an undeniably sexual context. Once a threshold is passed at which sex and violence are plainly linked, increasing the sexual explicitness of the material, or the bizarreness of the sexual activity, seems to bear little relationship to the extent of the consequences discussed here. Although it is unclear whether sexually violent material makes a substantially greater causal contribution to sexual violence itself than does material containing violence alone, it appears that increasing the amount of violence after the threshold of connecting sex with violence is more related to increase in the incidence or severity of harmful consequences than is increasing the amount of sex. As a result, the so-called 'slasher' films, which depict a great deal of violence connected with an undeniably sexual theme but less sexual explictness than materials that are truly pornographic, are likely to produce the consequences discussed here to a greater extent than most of the materials available in 'adults only' pornographic outlets.' US Department of Justice, Attorney General's Commission on Pornography - Final Report (1986), pp. 323-329. Smith at 10.

"A survey by the Video Software Dealers Association identified thirteen percent of the total market as "adult" or X-rated. This figure excludes most of the sexually violent material. The R-rated and unrated tapes are included in categories labeled 'Action/Adventure', 'Science Fiction', and Horror which together comprise more than half the market. Sexual scenes may be slightly less explicit (in order to avoid an X-rating), by using techniques such as partial nudity and covering genitals. This does nothing to lessen the harmfulness while increasing the availability to minors. Smith at 12.

"This category of entertainment media referred to as sadistic videotapes, I think it is fair to say, has the three most harmful elements that concern most clinicians, social scientists, as well

as the general public. Contained within the vast majority of these tapes are: 1) extreme violence, 2) sexualized aggression or sexually suggestive elements coupled or juxtaposed with violence, and 3) that the consumption of this material is by children and adolescents, the most vulnerable segment of possible consumers. Smith at 24-25.

In summary, Dr. Smith finds, "Violence in all media has become increasingly graphic and explicit. The violence in some movies and videotapes is accurately described as sadistic. Sadistic includes the enjoyment of cruelty and brutality, and the experiencing of pleasure in hurting and torturing other human beings. Most often it is violence for violence sake; gratuitous violence for shock and arousal unnecessary for story progression or even in pursuit of political causes or economic gain. It is glamorized violence as power and control. Violence is to entertain rather than teach any useful lesson. Violence is glorified as the only method for conflict resolution and it is presented as recreation including mutilation and homicide." Smith at 1.

The Commission finds (1) The violence proscribed by the bill is harmful to minors, both psychologically, physically and socially; it can desensitize minors to violence so that they are more prone to act it out, at worst, or at best, reduce their feelings toward victims of violence. (2) The video format is especially in need of regulation because the cultural and business contraints otherwise applicable to general theatres are not otherwise present.

The Commission recommends that the General Assembly adopt the Bill. ... .

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S D

93-L-011(11.25)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: No Sadistic Videos to Minors. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO PROHIBIT THE COMMERCIAL DISSEMINATION OF SADISTIC VIDEOS TO MINORS.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-190.21. Commercially disseminating sadistic video movies harmful to minors.

(a) Offense. -- A person commits the offense of commercially disseminating a sadistic video movie harmful to minors if, knowing the character or content of the video movie, he sells, rents, or otherwise distributes for consideration a sadistic video movie harmful to a minor.

(b) Definitions. -- The following definitions apply to this section:

(1) Minor. A minor is a person who is less than 18 years old.

(2) Sadistic Video Movie Harmful to Minors. A sadistic video movie harmful to minors is one which contains depictions of sadistic violence and which:

a. A reasonable adult applying contemporary community standards would find that when viewed as a whole the video movie has a

predominant tendency to appeal to a morbid interest of minors in violence;

b. A reasonable adult applying contemporary community standards would find that the depiction of sadistic violence in the video movie is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

c. A reasonable adult would find that when viewed as a whole the video movie lacks serious literary, artistic, political, or scientific value for minors.

(3) Sadistic Violence. Sadistic violence is the killing, torturing, or maiming of a person for the pleasure that the act brings to the participants.

(c) Defense. -- Except as provided in subdivision (2) of this subsection, a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:

(1) The defendant was a parent or legal guardian of the minor.

(2) Before disseminating the video movie, the defendant requested and received a drivers license, student identification card, or other form of identification indicating that the minor to whom the video movie was disseminated was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.

(3) The dissemination was made with the prior consent of a parent or guardian of the recipient.

(d) A violation of subsection (a) is a misdemeanor and is punishable by imprisonment for up to six months and a fine of at least five hundred dollars ($500.00)."

Sec. 2. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 3. This act becomes effective October 1, 1993, and shall apply to offenses occurring on or after that date.

LACY H. THORNBURG
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P.O. BOX 629
RALEIGH
27602-0629

--MEMORANDUM--

TO: Representative Paul Stam, Jr.,
Chairman of the Juvenile Law Study Commission

FROM: Thomas J. Ziko
Assistant Attorney General

DATE: February 2, 1990

SUBJECT: Regulation of the Dissemination of Sadistic Videos

It is my understanding that the Juvenile Law Study Commission will be reviewing a bill introduced during the 1989 session which was intended to regulate the commercial dissemination of excessively violent movies to minors. This memorandum is intended to provide an analysis of the bill, note the legal precedents pertinent to the bill's legality and suggest changes which will eliminate some legally suspect aspects of the bill without undermining its efficacy.

PURPOSE

The public is concerned that the extraordinarily violent films which are now available in video form pose a significant risk to the psychological health of impressionable minors. While a substantial amount of the evidence in support of these concerns is anecdotal, the 1986 Attorney General's Commission on Pornography found a strong correlation between sexually violent materials, including those which were not truly pornographic, with increased likelihood of aggression and sexual violence. Final Report of the Attorney General's Commission on Pornography, Rutledge Hill Press (1986), p. 39-41. The purpose of the proposed legislation is to protect minors from potential psychological injury from exposure to excessively violent films. These films are not sexually explicit and, therefore, are not regulated under G.S. § 14-190.1 or G.S. § 14-190.13, et seq. The proposed legislation accomplishes this purpose by prohibiting the commercial dissemination of excessively violent videos in much

the same way that G.S. § 14-190.13, et seq. prohibits the display and dissemination to minors of sexually explicit materials.

OVERVIEW OF PROPOSED LEGISLATION

The statute prohibits the commercial dissemination of excessively violent videos to minors if those videos are deemed harmful to minors. A video is deemed harmful to minors only if (1) it contains depictions of sadistic violence as defined in the statute, (2) the adult community would find that the material appeals to a minor's morbid interest in violence, (3) the adult community would find that the material is unsuitable for minors and (4) a reasonable adult would find that the material lacks serious social value. The statute permits the defendant to avoid conviction by proving one or more affirmative defenses including the fact that he is a parent of the minor or had permission of the minor's parent prior to disseminating the material, was an agent of a institution such as a church or school which has recognized social responsibilities for minors or the defendant was deceived into believing that the minor was in fact over 18 years old or that the movie was approved for showing to persons of the age of the minors by the rating administration of the Motion Picture Association of America.

TECHNICAL ANALYSIS OF THE STATUTE

The Offense

Under the proposed legislation, a person commits the offense of commercially disseminating sadistic video movies harmful to minors if: (1) knowing the character or content of the material, (2) he distributes for consideration, (3) a sadistic video movie, (4) which is harmful to minors, (5) to a minor. The terms "minor" and "sadistic video movie harmful to minors" are defined. The term "sadistic violence," which is an element of the definition of "sadistic video movie harmful to minors," is also defined. Finally, the offense is expressly limited to commercial disseminations of the offending video movies.

Definitions

The key term in the statute is "sadistic violence" which is defined in section (b)(3) as "the killing, torturing or maiming of a person for the pleasure that the act brings to the participants." Under this definition, sadistic violence must be perpetrated against a person. This means that cartoons and other animated depictions of violence and movies which depict violence against animals do not come within the scope of the proposed legislation. Furthermore, in order to qualify as sadistic violence under the proposed legislation the killing, torturing or

maiming of the person must be for the pleasure that the act brings to the participants. Therefore, the proposed legislation does reach those movies wherein the perpetrators of the violence do not appear to derive pleasure or enjoyment from the pain they are inflicting on their victims.

While the definition of sadistic violence is the key to the proposed legislation, the Commission should note that sadistic violence is but one element of the definition of "sadistic video movie harmful to minors." The mere fact that a movie might contain episodes of sadistic violence does not mean that the proposed legislation would prohibit its commercial dissemination to minors. The proposed legislation prohibits commercial dissemination to minors of movies which contain depictions of sadistic violence only if the movie also satisfies the other three parts of the definition of a sadistic video movie harmful to minors. Those three parts of the definition are set out in sections (b)(2)(a), (b)(2)(b) and (b)(2)(c).

Section (b)(2)(a) requires a finding that when viewed as a whole, and in light of contemporary community standards, the movie has a predominant tendency to appeal to a minor's morbid interest in violence. The purpose of this section is to avoid criminalizing the commercial dissemination of those movies which contain isolated scenes of sadistic violence but do not predominantly appeal to a morbid facination with violence.

Section (b)(2)(b) requires a finding that the sadistic violence depicted in the movie is so shocking that a reasonable adult would find that the sadistic violence is patently offensive to contemporary standards concerning what is suitable for minors to view. The purpose of this section is to avoid criminalizing the commercial dissemination of those movies which may contain many scenes of sadistic violence but of a muted or restrained type.

Finally, section (b)(2)(c) requires a finding that the movie as a whole lacks serious literary, artistic or scientific value for minors. The purpose of this section is to protect the distribution of those rare movies which might contain repeated scenes of graphic sadistic violence but which due to their composition have significant social value.

The statute prohibits the dissemination to minors of only those movies which contain depictions of sadistic violence as defined in the statute and satisfy the other three parts of the definition of sadistic video movies harmful to minors. In this respect the statute is substantially similar to G.S. §§ 14-190.13 through 190.15 which prohibit the dissemination or display to minor of sexually explicit materials harmful to minors.

Defenses

Section (3) of the proposed legislation sets out several affirmative defenses. The defenses are affirmative defenses, which means that if the prosecution is successful in proving that the defendant is guilty of commercially disseminating a sadistic video harmful to minors to a minor, the defendant may avoid conviction by proving one of the defenses set out in this section by a preponderance of the evidence. Defenses (c)(1) and (c)(4) recognize the primacy of parental control and guidance in selecting movies for their children. Defense (c)(2) recognizes that certain established, social institutions which are trusted with educating or serving children should be permitted to exercise their professional judgment regarding materials appropriate for viewing by children without risking prosecution if their judgments do not coincide with those of a particular parent or segment of society. Defense (c)(3) is one of two safe havens for commercial distributors of video movies and affords them protection whenever they make reasonable efforts to ascertain the age of the persons to whom they are renting violent movies. Finally, defense (c)(5) provides a safe haven for those commercial distributors who abide by the well known rating system of the Motion Picture Association of America.

LEGAL PRECEDENTS

My research has failed to reveal any direct precedents for the proposed legislation. Nevertheless, extrapolating from cases which address the legality of limitations on the dissemination of sexually explicit materials to minors, one can generally predict the result of litigation contesting its legality.

The key precedent in support of the state's authority to regulate the dissemination to minors of videos containing excessive violence is Ginsburg v. New York, 390 U.S. 629 (1968). In that case the United States Supreme Court affirmed New York's efforts to limit the dissemination of sexually explicit but non-obscene materials to minors. In upholding the New York statute, the Supreme Court emphasized that the Court had previously "recognized that the state has an interest 'to protect the welfare of children' and to see that they are 'safeguarded from abuses' which might prevent their 'growth into free and independent well-developed men and citizens'." Id. at 640-641 (quoting, Prince v. Massachusetts, 321 U.S. 158 at 165). In light of that interest, the Supreme Court held that the state may protect children from exposure to sexually explicit materials as long as it was not irrational for the state to find that exposure to the material was harmful to minors. The Court then found that it could not find that limiting minor's exposure to materials which contain explicit depictions of sexual activity had no

rational relationship to the objective of safeguarding minors from harm. Therefore, the Court sustained the constitutionality of the New York statute.

Given the holding in Ginsburg, it appears that the courts would recognize the state's authority to limit the dissemination of extremely violent materials to children as long as one could rationally conclude that exposure to such materials is harmful to minors psychological health. This is an issue of legislative consideration and discussion.

Aside from the question of the state's authority to enact legislation for the protection of children, Ginsburg also addresses the question of whether statutes similar to the proposed legislation might be void for vagueness. In rejecting the claim that such statutes are unconstitutionally vague, the Supreme Court held that an offense defined in terms virtually identical to its own statements of the elements of obscenity gave "men in acting adequate notice of what is prohibited" and did not offend the requirements of due process. Id. at 643. In light of the fact that the proposed legislation prohibiting commercial dissemination of sadistic videos is modeled after the statute at issue in Ginsburg, it is my opinion that the proposed legislation is not unconstitutionally vague.

Finally, the Committee should note that the statute makes it an offense to commercially disseminate sadistic video movies harmful to minors to minors only if the person who disseminates the material does so "knowing the character or contents of the material." This is a sufficient scienter requirement to satisfy those Supreme Court precedents which require that prosecutions under statutes which criminalize the dissemination of materials arguably entitled to First Amendment protection be limited to persons who knowingly engage in the prohibited conduct.

My review of the precedents indicates that the most difficult challenges to the statute will focus around claims that the affirmative defenses provided for in section (c) either violate the Equal Protection Clause of the Fourteenth Amendment or constitute an illegal delegation of legislative authority in violation of Article II, Section 1 of the Constitution of North Carolina.

The critical step in determining whether the affirmative defenses in the proposed legislation violates the Equal Protection Clause is the determination of the proper standard for review. In American Book Sellers, Inc. v. Webb, 643 F.Supp. 1546 (N.D. Ga. 1986) the United States District Court, using a strict scrutiny test, found that a statute which exempted libraries from prosecution for disseminating materials harmful to minors did not

serve a compelling state interest. In Upper Midwest Book Sellers v. City of Minneapolis, 602 F.Supp. 1361 (D. Minn. 1985), a United States District Court applied a strict scrutiny test to find that exemptions similar to those provided for the institutions and employees described in section (c)(2) in the proposed legislation served no substantial or necessary interests in light of the fact that the statute was already limited to commercial disseminations. In M.S. News Company v. Casado, 721 F.2d 1281 (10th Cir. 1983) and Ripplinger v. Collins, 868 F.2d 1043 (9th Cir. 1989) the United States Circuit Court of Appeals considered exemptions for schools and churches and cable television under the rational basis test and found that exemptions for schools and churches and cable television met the state's rational interests in (1) distinguishing between commercial and noncommercial dissemination of material harmful to minors and (2) cable television and all other means of disseminating obscenity.

In light of this split in the courts, the Committee should give consideration to the exact purposes for the exemptions specified in section (c)(2) to determine whether they serve a substantial state interest.

The exemption provided for in section (c)(5), i.e., that the material was disseminated in accordance with its MPAA rating, raises the question of whether this defense constitutes an unconstitutional delegation of legislative authority to a private entity. In State v. Watkins, 191 S.E.2d 135, 259 S.C. 185 (1972) the South Carolina Supreme Court found that an exemption in South Carolina's obscenity statute for movies which carry the MPAA seal of approval constituted an unlawful delegation of legislative power without appropriate guidelines or standards. In Eastern Federal Corporation v. Wasson, 316 S.E.2d 373, 181 S.E.2d 450 (1984) the South Carolina Supreme Court held that a statute which imposed a 20% tax on admissions for films rated "X" by the MPAA constituted an unlawful delegation of legislative power because the legislature had not provided statutory guidelines for the rating of films in the state.

While the decisions in Eastern Federal Corp. and Watkins raise some questions about the validity of the section (c)(5) defense, it apears to me that the question of whether this defense constitutes an unlawful delegation of legislative authority is subject to debate. Unlike the statutes at issue and the Eastern Federal Corp. and Watkins,' the legislation in question does not use the MPAA rating to define the offense. Instead, the legislation in question permits defendants who are guilty of violating the statute to escape conviction by proving that their conduct was consistent with established industry guidelines. Whether such an argument would avoid claims that the

statute constituted an unlawful delegation of legislative authority remains to be seen.

In light of these anticipated attacks on the statute's constitutionality, I believe that the chances for a successful defense of the statute would be significantly improved if the following changes were made in the proposed legislation:

(1) Delete the defense for churches, schools, etc. under (c)(2). This would significantly reduce the statute's exposure to claims that it violates equal protection principles. Furthermore, in light of the fact that the statute prohibits only the commercial dissemination of sadistic videos harmful to minors, it is unlikely that institutions and individuals identified in section (c)(2) would ever be subject to prosecution.

(2) Delete section (c)(5). One can reasonably assume that the prosecution would find it very difficult to prove all the elements of the offense in those cases where a defendant disseminated a video movie in accordance with the rating administration of the MPAA. Therefore, the present section serves no substantial purpose but exposes the proposed legislation to charges that it unlawfully delegates legislative authority to a private entity.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S D

93-L-010(11.25)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Safe Schools. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO PROHIBIT PARENTS AND OTHERS FROM PERMITTING A MINOR TO POSSESS ANY FIREARM ON SCHOOL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§14-316.2. Allowing minor to possess firearms on school property.

(a) The following definitions apply in this section:

(1) Firearm. -- Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive, or the frame or receiver of such a weapon.

(2) Minor. -- Any person under 18 years of age, unless emancipated.

(3) Pistol. -- Any loaded or unloaded handgun of any kind or variety.

(b) It is unlawful for any parent, guardian, or person standing in loco parentis, knowingly to permit his minor child to possess any firearm on any public or private school property.

(c) It is unlawful for any person to keep any firearm within any premises that are under his custody or control if he knows or reasonably should know that a minor has a reasonable possibility to gain access to the firearm, and the minor obtains access to

the firearm and possesses or allows another minor to possess the firearm on any public or private school property.

(d) It is an affirmative defense to a prosecution under subsection (c) of this section that:

(1) The minor obtained the firearm as a result of his illegal entry of any premises.

(2) The firearm is kept in a locked container or in a location which a reasonable person would believe to be secure.

(3) The person is a law enforcement officer as defined in G.S. 14-288.20, and the minor obtained the firearm while it was carried on the person or within such close proximity to the person, that the person could readily retrieve and use the firearm as if carried on the person.

(e) A person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court.

Sec. 2. This act becomes effective October 1, 1993, and applies to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-001(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Aid Endangered Minor Victim. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO REQUIRE WITNESSES WHO KNOW OF CRIMES, INTENTIONAL ACTS, OR ACCIDENTS THAT PLACE MINOR VICTIMS AT RISK OF BODILY INJURY TO NOTIFY LAW-ENFORCEMENT AUTHORITIES, TO ACT TO PREVENT THE INJURY, AND TO AID THE VICTIMS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 43E.

"Duty to Aid Endangered Minor Victim.

"§ 1-539.25. Duty to aid endangered victim; definition; duty; evidence; liability, immunity.

(a) As used in this Article, the term 'witnesses' used as a verb means to observe or know that an intentional act, an accident, or a crime is about to occur, is occurring, or has occurred. The term "witness" used as a noun means a person who witnesses, as defined in the first sentence of this subsection.

As used in the Article, the term 'victim' means a victim who is seventeen years of age or younger at the time of the intentional act, accident, or crime.

(b) A person who witnesses an intentional act, an accident, or a crime and who perceives that a victim of the intentional act,

accident, or crime may suffer or has suffered bodily injury as a result of the intentional act, accident, or crime shall:

(1) Immediately notify law-enforcement authorities unless this witness knows or reasonably believes that those authorities have already been notified;

(2) Attempt to prevent the injury unless doing so would place this witness in danger or would increase the danger to the victim; and

(3) Aid the victim unless doing so would place this witness in danger or would increase the danger to the victim. When the danger to this witness or the victim no longer exists, this witness shall then aid the victim.

(c) The imposition of liability pursuant to this section shall be based solely on clear, cogent, and convincing evidence.

(d) A person who fails to comply with subsection (b) of this section is liable to the victim for damages proximately caused by the failure to comply. This liability is qualified as follows:

(1) The total amount of liability pursuant to this section is limited to a maximum of five thousand dollars ($5,000) per occurrence per witness; and

(2) This liability is secondary to the liability of any person who is originally at fault for the intentional act, the accident, or the crime.

Liability imposed pursuant to this section shall not be covered by any insurance policy.

(e) A person who attempts to prevent injury in compliance with subdivision (2) of subsection (b) of this section or who provides assistance in compliance with subdivision (3) of subsection (b) of this section is immune from civil and criminal liability unless:

(1) The person's actions constitute wilful or wanton misconduct as determined by the trier of fact; or

(2) The person has received or expects to receive remuneration for these actions."

Sec. 2. This act becomes effective October 1, 1994, and applies to intentional acts, accidents, and crimes occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-002(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Juv. Pet./Guardian ad Litem. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO REQUIRE THAT OPPORTUNITY TO BE HEARD BE PROVIDED A JUVENILE'S GUARDIAN AD LITEM PRIOR TO THE DISMISSAL OF THE PETITION ALLEGING ABUSE OR NEGLECT OF THE JUVENILE, TO ENSURE THE GUARDIAN AD LITEM'S STANDING TO REPRESENT THE JUVENILE, AND TO MAKE OTHER CHANGES NECESSARY TO PROTECT THE INTERESTS OF THE JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-563 reads as rewritten:

"§ 7A-563. Commencement of ~~action.~~ action; guardian ad litem's opportunity to be heard prior to dismissal of petition of abuse or neglect.

(a) An action is commenced by the filing of a petition in the clerk's office when that office is open, or by the issuance of a juvenile petition by a magistrate when the clerk's office is closed, which issuance shall constitute filing.

(b) If a petition alleging abuse or neglect of a juvenile is considered for dismissal at any time during any of the proceedings under Subchapter XI of Chapter 7A of the General Statutes, the party moving for dismissal shall notify the guardian ad litem appointed for the juvenile pursuant to G.S. 7A-586 of the motion to dismiss sufficiently prior to the hearing or the motion to dismiss to give the guardian ad litem an

opportunity to be heard before the appropriate official regarding the motion for dismissal of the petition."

Sec. 2. G.S. 7A-586 reads as rewritten:

"§ 7A-586. Appointment and duties of guardian ad litem.

When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the judge may appoint a guardian ad litem to represent the juvenile. The guardian ad litem has standing to represent the juvenile in all actions in which the juvenile is a party. The appointment shall be made pursuant to the program established by Article 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S. 7A-492. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights within the proceeding. The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to move for amendment of the petition; to facilitate, when appropriate, the settlement of disputed issues; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the ~~judge.~~ judge, including representing the juvenile regarding the dismissal of the petition.

The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein he may be called on to testify in a matter relating to abuse.

The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made to anyone except by order of the judge. If the department petitions for and receives legal custody of the juvenile pursuant to G.S. 7A-661(b), the guardian ad litem has

the right and the standing to request of and receive from the department the juvenile's pre-adoption placement information sufficiently prior to any adoption proceedings to enable the guardian ad litem to represent the best interests of the juvenile."

Sec. 3. G.S. 7A-661(b) reads as rewritten:

(b) The court may approve the continued placement of the juvenile in foster care on a voluntary agreement basis, disapprove the continuation of the voluntary placement, or direct the department of social services to petition the court for legal custody if the placement is to continue. If the department does not petition the court for legal custody after the court has directed it to do so, the court shall order the juvenile removed from foster care and returned to the juvenile's home."

Sec. 4. This act becomes effective October 1, 1993, and applies to petitions filed and requests for information made on or after that date.

B. Empowering Parents - Introduction

The Commission finds that the State cannot be the principal source of child care for the children of North Carolina. Families fulfill that function. In 1991 the Commission recommended a statewide bill to give Juvenile courts jurisdiction over a class of 16 and 17 year old undisciplined children - those who are beyond the disciplinary control of their parents. The 1991 Senate considered and passed such a bill but limited it to an 18 month pilot program for Wake, Lenoir and Catawba counties. The House Courts Committee reported the same favorably and it was referred to the Appropriations Committee where no further action was taken. Information from the Administrative Office of the Courts indicates that no additional appropriations would be required for a pilot program. Information from the Administrative Office of the Courts indicates that if the pilot program were authorized that the pilot districts would likely use intensive supervised probation for these cases.

Undisciplined 16 and 17 year old children are in an awkward situation. They do not have the full rights of adults. But the Juvenile court's jurisdiction is so limited that they are unable to help such children. The Commission again recommends a pilot program to test whether these children would be helped by extension of jurisdiction.

Existing statutes, G.S. 110-41.1 et. seq., Parental Control of Children, assist parents to act on their own behalf and without intervention of the Juvenile Court to retain control of some minors - primarily runaways. The 1991-92 General Assembly amended the Parental Control Act by deleting duplicative appeals and improving venue. However, it did not adopt the portion of the bill recommended to it in 1991 facilitating pro se representation by parents.

The Commission finds that if the Clerk of Superior Court were directed to assist parents and if the Administrative Office of the Courts were directed to provide necessary forms that some parents would be able to take the initiative to restrain the anti-social behavior of their own children.

This provision for pro se representation only applies to unemancipated minors who are 16 and 17 years old. The Plaintiff/Parent would be required to pay the cost of court - including any fee for a guardian ad litem for the child.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-013(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Undisciplined Juveniles. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO ESTABLISH A PILOT PROGRAM UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS REGARDING JUVENILE COURT JURISDICTION OVER JUVENILES BETWEEN 16 AND 18 YEARS OF AGE WHO ARE BEYOND THE DISCIPLINARY CONTROL OF THEIR PARENTS.

The General Assembly of North Carolina enacts:

Section 1. There is established a pilot program to be administered by the Administrative Office of the Courts to expand juvenile court jurisdiction in the pilot counties to include as undisciplined juveniles those juveniles at least 16 years of age and under 18 years of age who are beyond the disciplinary control of their parents. The pilot program shall be implemented in Catawba, Lenoir, and Wake Counties. In these counties, for the duration of the pilot, the definition of undisciplined juvenile shall include "a juvenile at least 16 years of age and less than 18 years of age who is beyond the disciplinary control of his parent, guardian, or custodian." The purpose of the pilot program is to determine whether juvenile court jurisdiction should be broadened to include such juveniles on a statewide basis. The Administrative Office of the Courts shall evaluate the pilot and file a report on the pilot with the General Assembly on or before the convening of the 1995 Session. The pilot shall terminate

April 1, 1995. The pilot program shall be conducted within existing funds of the Administrative Office of the Courts.

Sec. 2. This act becomes effective October 1, 1993.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-010(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Parental Rep./Pro Se. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO FACILITATE PRO SE REPRESENTATION BY PARENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-44.5. Pro Se representation by parents.

(a) Pro Se Procedures. -- Any aggrieved party entitled to relief under this Article may file a civil action and proceed pro se, without the assistance of legal counsel. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in that county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who

shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this section, if the party is proceeding pro se, the clerk shall set a date for hearing within 10 days from the date of issuance of the order and issue a notice of hearing and shall effect service of the summons, complaint, notice, order, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(b) Pro Se Forms. -- The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section.

(c) Contempt. -- A party may file a motion for contempt for violation of any order entered pursuant to this Article. The party may file and proceed with the motion pro se, using forms provided by the clerk of superior court. Upon the filing pro se of a motion for contempt, the clerk shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The clerk shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(d) Applicability. -- This section only applies to unemancipated minors who are at least 16 years of age at the time of the initiation of the action.

(e) Court Costs. -- The plaintiff shall pay the costs of court including any fee for a guardian ad litem for the child."

Sec. 3. This act becomes effective October 1, 1993, and applies to actions initiated on and after that date.

C. Protecting the Community - Introduction

A civilized state must protect the community. Some minors are engaged in serious criminal activity and must be stopped. Two bills recommended by the Commission further this goal. The first enlists the aid of parents. The second enlists the aid of the full range of remedies available to adult courts.

G.S. 1-538.1 now provides strict liability for damage to person or property by minors up to $1,000. This section was adopted, not out of consideration for compensation for the victims of injurious or tortious conduct of children, but as an aid in the control of juvenile delinquency. Parental indifference and failure to supervise the activities of children is one of the major causes of juvenile delinquency. Parental liability for harm done by children will stimulate attention and supervision. The total effect will be reduction in the anti-social behavior of children. General Insurance Company of America v. Faulkner 259 NC 317, 130 SE 2D 645 (1963).

Partially to recognize the effects of inflation but more importantly to increase the amount from an almost nominal sum to one that will actually get the attention of parents, the Commission recommends that the amount of damages for which parents are liable be increased from $1,000 to $5,000.

Juvenile transfers to Superior Court. The 1991 assembly provided that in first degree murder cases involving a 14 or 15 year old that the District Court Judge finding probable cause must transfer the case to Superior Court for trial as in the case of adults. Class B and C felonies include such offenses as first degree burglary, first degree rape and second degree murder. In these cases there should be a presumption of a transfer to Superior Court. Therefore the commission recommends that if an alleged offense constitutes a Class B or C felony and if the District Court finds probable cause that the case shall be transferred to Superior Court unless the judge makes written findings that the interests of the State would not be served by such transfer.

A rash of violent juvenile crime - including murder - makes it imperative that the very most serious offenses be heard in a forum where all of the remedies of the law may be considered. If the District Court does not transfer a Class B or C felony, the maximum penalty it can impose is confinement until the juveniles 18th birthday. That is an insufficient range of remedies for the very serious offenses included within Class B or C felonies.

Juvenile Law enforcement records & files are currently available to prosecutors, and court counselors. It is not clear that they are available to a sentencing judge after conviction. They should be so that the judge may be as fully informed as the parties before him.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-035(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Strict Liability/Minor's Damage/Change. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO INCREASE THE MAXIMUM AMOUNT THAT MAY BE RECOVERED IN STRICT LIABILITY FOR DAMAGE TO PERSON OR PROPERTY BY MINORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-538.1 reads as rewritten:

" §1-538.1. Strict liability for damage to person or property by minors.

Any person or other legal entity shall be entitled to recover actual damages suffered in an amount not to exceed a total of ~~one thousand dollars ($1,000)~~ five thousand dollars ($5,000) from the parent or parents of any minor who shall maliciously or willfully injure such person or destroy the real or personal property of such person. Parents whose custody and control have been removed by court order or by contract prior to the act complained of shall not be liable under this act. This act shall not preclude or limit recovery of damages from parents under common law remedies available in this State."

Sec. 2. This act becomes effective October 1, 1993 and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-009(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Juv. Transfer to Sup. Ct. Change. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO AMEND THE LAW REGARDING THE TRANSFER OF JURISDICTION OVER A JUVENILE TO SUPERIOR COURT FOR TRIAL AS AN ADULT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-608 reads as rewritten:

"**§ 7A-608. Transfer of jurisdiction of juvenile to superior court.**

The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile 14 years of age or older to superior court if the juvenile was 14 years of age or older at the time he allegedly committed an offense which would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the judge finds probable cause, the judge shall transfer the case to the superior court for trial as in the case of adults. If the alleged felony constitutes a Class B or Class C felony and if the judge finds probable cause, the judge shall transfer the case to superior court for trial as in the case of adults unless the judge makes a written finding that the interests of the State would not be served by the transfer and the reasons for this finding."

Sec. 2. This act becomes effective October 1, 1993, and applies to offenses committed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-034(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Juv. Records/Sup. Ct. Sentencing. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO REQUIRE THAT JUVENILE RECORDS BE AVAILABLE FOR SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-675(e) reads as rewritten:

"(e) Law-enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to superior court. Law-enforcement records and files concerning juveniles shall be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian, and ~~custodian.~~ custodian and to any judge determining the sentence of any person who has been convicted of the crime for which the sentencing is being determined, but only after the conviction."

Sec. 2. This act becomes effective October 1, 1993 and applies to sentences imposed for offenses committed on or after that date.

D. Miscellaneous - Administrative - Introduction

Space in local detention homes or regional homes is at a premium. As an administrative matter and as an aid to the best utilization of space in the juvenile system the Commission recommends that in the discretion of the Division of Youth Services space in training schools be used for juveniles sentenced for thirty days or less.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H D

93-LFZ-008(1.1)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Training School Alternative. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION ADDING TRAINING SCHOOLS TO THE COMMITMENT OPTIONS WHEN COMMITMENT OF A JUVENILE FOR THIRTY DAYS OR LESS IS ORDERED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-652(c) reads as rewritten:

"(c) In no event shall commitment of a delinquent juvenile be for a period of time in excess of that period for which an adult could be committed for the same act. Any juveniles committed for an offense for which an adult would be sentenced for 30 days or less shall be assigned to a local detention home as defined by G.S. 7A-517(15) or a regional home as defined by ~~G.S. 7A-517(26),~~ G.S. 7A-517(26), or the training school system, in the discretion of the Division of Youth Services."

Sec. 2. This act becomes effective October 1, 1993 and applies to commitments ordered for offenses committed on or after that date.

JUVENILE LAW STUDY COMMISSION - 1993

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Ms. Jones:
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Senator Allran:
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Rep. Steve W. Wood
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Rep. Wood
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Member of the House
Appointed by the Speaker
(expires 6/30/94)

Rep. Robert J. Hensley
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Rep. Hensley:
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Member of the House
Appointed by the Speaker
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JUVENILE LAW STUDY COMMISSION LEGISLATION IN THE 1990 SHORT SESSION

1. H250 - Neglected Juvenile Defined - ratified in the form recommended by the Commission.

2. Victims Compensation Fund Extended was introduced by Representative Pete Thompson and was ratified in the form recommended by the Commission.

3. Victims Compensation Clarified was introduced by Representative Stam as H2151. It passed the House. The text was included as a special provision in the operating budget and was ratified.

4. S817 (House Committee Substitute) Possession of Child Pornography - was ratified.

5. S890 - Termination of Parental Rights Change - The views of the Commission were distributed to the parties. However no action was taken by the House in 1990. See 1992 for further action resulting in ratification of Chapter 941 of the 1991 Session Laws.

JUVENILE LAW STUDY COMMISSION LEGISLATION IN THE 1991-92 SESSION

1. S181 - A Senate Committee Substitute for the Commission's bill on Undisciplined Juveniles was adopted by the Senate. It received a favorable report from the House Courts Committee. It was not acted on by the House Appropriations Committee. See this report for further recommendations to the 1993 Assembly.

2. Section 1 of the Commission's bill on Parental Control/ Appeals was ratified as Chapter 1031. Section 2 of that bill is proposed in this report.

3. Termination of Parental Rights Change was introduced by Representative Walter Jones, Jr. and ratified as Chapter 941.

4. Chapter 353 - Intermittent Confinement was ratified.

5. Chapter 352 - Release Order Following Transfer to Superior Court - was ratified.

6. Chapter 842 - Amend Transfer to Superior Court for First Degree Murder - was ratified.