

NORTH CAROLINA

CRIMES

A Guidebook on the Elements of Crime

Seventh Edition • 2012

Jessica Smith



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SCHOOL OF
GOVERNMENT

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Preface

This is the seventh edition of a book first published in 1977. This edition updates the sixth edition with new offenses, legislative changes, and case law. Also, in response to reader requests I replaced the old shortened case citations with full case citations, including case names. Other new features include a case index and simplified table of statutes and many new additional notes, including those regarding charging issues, multiple convictions and punishments, defenses, and exceptions. Finally, our design team improved the layout of the book, making it even easier to use and ensuring that you will be able to quickly find what you need.

NORTH CAROLINA CRIMES embodies the work of many School of Government faculty and staff over thirty-five years. This edition builds on all of the great work that came before. For this edition, I thank School of Government faculty members Robert Farb, John Rubin, Jeff Welty, Jamie Markham, and Shea Denning, all of whom reviewed drafts of chapters. Thanks also to my law student research assistants William Biggers and Jason McGuirt and lawyer Stefanie Rodriguez. William, Jason, and Stefanie performed much of the tedious cite checking that ensures the accuracy of the book. However, I am responsible for any errors that remain. Thanks to the School of Government staff members who contributed to editing and production, especially editor Melissa Twomey for her precision and keen eye and Katrina Hunt who kept the whole train rolling. And finally, thanks to Chris, Ariel, and Zoe for putting up with my high stress levels and sub-par dinner offerings for well over a year as I juggled writing this book and all of my other work. Your unwavering confidence in me sealed my success.

I welcome comments about this book. You can reach me by email at smithj@sog.unc.edu or by regular mail at the School of Government, CB # 3330, Knapp Building, The University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-3330.

Jessica Smith
Chapel Hill
December 2011

Introduction

Purpose of This Book

NORTH CAROLINA CRIMES is a treatise on North Carolina substantive criminal law. Originally it was designed primarily to help law enforcement officers decide which offenses to charge, if any, and what evidence should be gathered to prepare a case for trial. The book has evolved from its original purpose and now serves as an important secondary reference source on substantive criminal law for law enforcement officers, magistrates, prosecutors, public defenders, defense lawyers, and judges, as well as for those studying criminal law in the academic setting.

Two core principles guide all School of Government work: nonpartisanship and non-advocacy. Thus, this book is designed to be neutral; it presents the law and leaves it to the advocates to make the best arguments possible for their clients based on that law.

Readers should not rely on the book for charging language. Another School of Government publication, ARREST WARRANT AND INDICTMENT FORMS, 6th edition (2010), by Jeff Welty, provides sample charging language for a wide variety of crimes.

This edition incorporates statutory changes made through the 2011 session of the General Assembly and case law through December 31, 2011. It supersedes all earlier editions and supplements.

Coverage of This Book

This book attempts to cover all criminal offenses except those that are charged only rarely in the North Carolina criminal justice system. Also, while it covers some motor vehicle offenses, it does not attempt to comprehensively cover motor vehicle law. Nor does it attempt to cover other special subjects such as alcoholic beverage control law and fish and game law.

How to Find Offenses in This Book

Readers can find a particular offense in this book by consulting

- (1) the detailed table of contents at the beginning of the book, which lists all covered offenses;
- (2) the table of statutes at the back of the book; or
- (3) the subject index, also at the back of the book.

Contents of This Book

The book has introductory chapters on states of mind, defenses, participants in crimes, and punishment under Structured Sentencing and separate chapters on various major categories of offenses, such as homicide and assaults. For each substantive offense covered, the book contains five sections:

Statute. In this section, the relevant statute is reproduced. If the offense is a common law offense, this section will indicate that fact.

Elements. In this section, the book sets out the elements of the offense. Usually an offense is broken down into elements according to the pattern established by a North Carolina appellate case or by the North Carolina Pattern Jury Instructions. In some cases, the breakdown of elements appearing here is original. There is no single “right” way to list elements. One person might regard one element of the crime of misdemeanor larceny as being “takes personal property belonging to another,” while another person might break that phrase down into three elements: “(1) takes (2) personal property (3) belonging to another.”

Punishment. In this section, the book sets out the punishment for the offense. See Chapter 4 (Punishment under Structured Sentencing) for a detailed discussion of punishment under Structured Sentencing.

Notes. The notes section contains explanatory points regarding the offense. Some of the notes will be keyed to the elements—for example, there may be a note about Element (1) of an offense. However, many elements do not have notes; this merely means that nothing needs to be said about a given element that is not obvious or that there is no interpreting case law for that element. Other notes will address common issues that arise regarding the offense, such as charging issues and multiple convictions and punishments.

Related Offenses Not in This Chapter. In this section, the book lists related offenses not covered in the particular chapter. Thus, a reader looking under “Common Law Robbery” will not find armed robbery listed as a related offense because armed robbery is dealt with in the same chapter as common law robbery. On the other hand, felonious larceny is listed as a related offense because it appears in another chapter. When the related offense is included in another chapter, the reader will be directed to the relevant chapter.

This section also lists related crimes that did not seem sufficiently important or frequent to be included in the book. When such an offense is listed, it appears without enclosing quotation marks and with a citation to the relevant provision in the North Carolina General Statutes. For example, in this section under “Misdemeanor Child Abuse” in Chapter 9 (Abuse and Neglect) the following offense appears: Exposing child to fire. G.S. 14-318.

Citations to Legal Authority

This book does not attempt to give complete legal authority for every point made. For most issues, it gives at least some legal authorities to be used as starting points for those who might want to look further. In other instances, the citations might be fairly comprehensive. The later history of a case, such as the fact that it was affirmed by a higher court, often is not included. Obviously, cases should be checked before being cited as authority.

This book uses standard case citation form. However, because most North Carolina judicial officials do not use the South Eastern Reporter, parallel citations are included only for newer cases for which the North Carolina citations are not yet available. Because the North Carolina General Statutes are cited so frequently, this book employs the shorthand form “G.S.” to refer to the General Statutes. Thus, a citation to G.S. 14-318.4 refers to section 318.4 of

Chapter 14 of the North Carolina General Statutes. The short form “S.L.” refers to a North Carolina session law. Session laws are available on the North Carolina General Assembly’s web page (www.ncga.state.nc.us/).

Miscellaneous Points of Interpretation

“He”. Many North Carolina criminal statutes employ the word “he”. Under rules of statutory construction, words in the masculine gender, such as “he”, should be read as referring to females as well as males unless the context clearly shows to the contrary. G.S. 12-3(1). Thus, unless otherwise specified, a crime may be committed by either a male or a female.

“Person” includes corporation. The word “person” in a criminal statute (and the word “person” used in the descriptions of the elements of offenses in this book) includes a corporation. G.S. 12-3(6). Thus, a corporation may be convicted of a crime and may be a victim of a crime, just like a natural person. However, a corporation is charged and served with criminal process in a different manner than a natural person. G.S. 15A-773.