

DWI loophole?

Commission to study effectiveness of state drunk driving laws

By **MATT BIVENS**
Staff Writer

A clause in N.C. drunk driving laws may be allowing repeat offenders to be tried as first-time offenders.

When one person is charged with two separate Driving While Impaired offenses, the person must be convicted of the first offense before being arrested for the second — otherwise, the person will be charged as a first-time offender in both cases, said Mary Dombalis, assistant district attorney for Durham County.

But Joe Hackney, representative to the N.C. legislature for Orange and Chatham counties, said he doesn't consider the clause a loophole.

"What they don't tell you is that the court can consider any other factor which aggravates the seriousness of the offense," Hackney said, quoting from the DWI statute.

Judges can use this catch-all clause to consider DWI convictions that occur after a first arrest, he said.

The N.C. Legislature has appointed a commission to study the

effectiveness of the DWI laws, Hackney said, and the commission will close any loopholes it finds.

"If the DA's bring that (the clause) to our attention, we will take a look at it," he said. "And if it is a 'loophole,' we will fix it."

Even if prior convictions are not considered in sentencing, it is important to remember that offenders are not getting off without penalty, Hackney said.

"You're still getting punished for each one (each offense)," he said.

Dombalis said sentences for people convicted of DWI are divided into five "levels" of punishment, with level one being the lightest sentence and level five the harshest.

Judges weigh the circumstances of each particular case to determine the level of punishment, she said.

The level depends on the distinctive factors of each case, which are broken up into three groups: grossly aggravating, aggravating, and mitigating, Dombalis said.

Grossly aggravating factors include having a record of DWI offenses within seven years, driving on a revoked license, or seriously injuring or killing another person as a result of drunk driving.

Aggravating factors are less serious, including an unusually high blood alcohol content or a prior conviction for DWI that occurred seven or more years ago.

Mitigating factors are circumstances in the defendant's favor, such as an otherwise safe driving record or only slight intoxication while driving.

Overall, DWI laws are well-enforced in North Carolina, said Carol Popkin, a research associate at the Highway Safety Research Center.

About 92 percent of all defendants whose blood-alcohol content registers .09 percent or above are convicted of DWI, Popkin said.

A driver with a blood-alcohol content of .10 percent is considered intoxicated, but Dombalis said judges also consider how much the alcohol

impaired the person's ability to drive. But Paul Alwine, president of MADD (Mothers Against Drunk Driving), said the conviction rate of 92 percent is inflated.

He said 10 percent of those with a blood-alcohol content of .09 percent or above are actually found not guilty, 5 percent are given a lighter sentence than the law calls for, and 2 percent are freed through technicalities.

When the defendant's blood-alcohol content is .10 or .11 (on or near the borderline), the charges are often dismissed or reduced by the courts, Alwine said, because of overcrowded jails and full court dockets.

"We've got a lot of kindly liberal judges (in North Carolina)," he said.

As of Oct. 9, automobile accidents have killed 1,160 people in 1987, according to collision reports from the N.C. Department of Motor Vehicles. About 50 percent of the accidents were alcohol-related.

Iranians promise to retaliate after attack on oil platforms

From Associated Press reports

MANAMA, Bahrain — Iran will strike back and "make the U.S. regret" the Navy shelling that destroyed two oil platforms in the Persian Gulf, Iranian leaders said Tuesday.

Hashemi Rafsanjani, speaker of the Iranian Parliament and one of Iran's most powerful leaders, said his vow of retaliation was "not a threat, but a reality."

Prime Minister Hussein Musavi said "compromise is impossible" and "we will retaliate" for the U.S. attack, Iran's official news agency reported. Musavi was quoted as saying that "after we deal with our reprisal blow, we will call it quits."

Military jet slams into hotel

INDIANAPOLIS — A military jet crashed a mile short of an Indianapolis International Airport runway Tuesday. At least nine people died and others were injured as the plane plowed into a hotel and exploded in a "fireball," authorities said.

Up to 25 people were missing and nine were confirmed dead in

News in Brief

the accident at the seven-story Ramada Inn-Airport, which occurred just after 9 a.m., authorities said.

The A-7D Corsair jet was attempting to make an emergency landing after an engine flameout, according to the Federal Aviation Administration.

White Patriot refuses to testify

FAYETTEVILLE — A former White Patriot Party member has been jailed for contempt for refusing to testify to a federal grand jury investigating the deaths of three men at a Shelby adult bookstore in January, a newspaper said Tuesday.

Hugh Black of the Gastonia area was sent to jail for six months on a U.S. District Court contempt order following a recent meeting of a grand jury investigating the case, The Fayetteville Observer said.

Duke to receive funds from bond sales

By **LEE ANN NECESSARY**
Staff Writer

Duke University, a private institution, will receive loan money from a bond sale appropriated by the N.C. General Assembly last summer.

Sen. Marshall Rauch, D-Gaston, said there is nothing unusual about a private institution issuing bonds to help pay for construction projects.

"The bill simply states that from

now on, when a state institution issues a bond, a portion of the bonds they issue will be low denomination or capital appreciation bonds," Rauch said.

Institutions now issuing bonds are encouraged by the bill to designate a percentage of the bonds issued as capital appreciation bonds.

Capital appreciation bonds allow people with limited earnings to purchase bonds at lower denominations which will procure the highest profits at their 20-year maturity rates.

In issuing such bonds, legislators intend to encourage parents of limited means to purchase the bonds for the education of their children.

Duke will receive loan money from the first bond sale to aid in funding a \$44.1 million construction and refinancing project.

Rauch said it is not uncommon for private institutions to issue bonds.

"It just so happens Duke University was the first to issue these bond sales," Rauch said.

Funds from the bond sale will aid in the construction of an undergraduate dormitory on Duke's West Campus and an executive education center, said J. Peyton Fuller, Duke University treasurer and vice president of planning. The money will also be used to renovate the old chemistry building, expand the Bryan Student Center and refinance an external debt on recently acquired buildings.

The General Assembly has strongly

recommended that private institutions designate a percentage of the bonds issued as capital appreciation bonds, but Fuller said the institutions were not required to sell a certain percentage.

"There's no requirement (to sell capital appreciation bonds) if they won't sell," Fuller said.

The amount of capital appreciation bonds sold will depend on how analysts anticipate the market, he said.

Fuller said the passage of the bond bill was the result of a concerted effort by many private institutions in North Carolina.

Other private schools, including Elon and Davidson colleges, are planning to come to the market with bond sales in the next few months, Fuller said.

Rape

from page 1

the use of a weapon. Second-degree rape also occurs if the perpetrator knows that the victim is physically or mentally incompetent at the time of the rape and forces sex upon her anyway.

According to police, the victim reported the assault in early September soon after the incident occurred, and made a positive, first-hand identification of Bowers and Harrison. A careful investigation followed, leading to the men's arrest.

The time lapse from the reporting of the incident to the arrest of the men was due to the careful investigation that goes into such a serious charge, said Chapel Hill police officer Ralph Pendergraph.

The alleged rape took place in the evening at 207 W. Cameron Ave., the

Sigma Phi Epsilon house, Pendergraph said. The victim wasn't injured, he said, but the details of the incident will be withheld until the trial is completed.

Pat DeVine, Chapel Hill district attorney, is prosecuting the case on behalf of the state and the victim.

Because rape is a criminal offense, the case is prosecuted on behalf of the state in addition to the victim. Both of the men have their own lawyers, DeVine said.

She said the defendants knew during the course of the investigation that they might be charged, although they were not formally arrested until Wednesday. Two men are being charged in the case because, according to the victim, both men had sex with her, DeVine said.

A preliminary hearing has been set for Oct. 28.

The case will then be turned over to N.C. Superior Court. "They will definitely go to trial," Pendergraph said. The trial will probably take place next year.

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