

2017

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Recommended Citation

Gonder-Stanley, Dionne R. (2017) "Facing a Legislative Straightjacket in the 21st Century: North Carolina Courts and the Prayer for Judgement Continued," *North Carolina Central Law Review*. Vol. 40 : No. 1 , Article 3.

Available at: <https://archives.law.nccu.edu/ncclr/vol40/iss1/3>

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Facing a Legislative Straightjacket in the 21st Century: North Carolina Courts and the Prayer for Judgment Continued

DIONNE R. GONDER-STANLEY*

I. INTRODUCTION

In February 2009, James Johnson pled guilty to attempted misprision of a felony. This was based on his admission that, out of fear, he wiped fingerprints from a victim's car and thereby assisted a murderer's attempt to cover up a 2004 killing.¹ In January 2011, Paula Harrison pled guilty to drug trafficking and other felony drug offenses because she was involved in the sale of prescription pills with two teenaged accomplices.² Johnson and Harrison differed as much in their demographic characteristics as they did in the nature of

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1. See N.C. Admin. Off. of the Cts., Ct. Info. Public Records Search [hereinafter, "N.C. CIPRS"], Case Details for State v. James Johnson, Nos. 07 CRS 56748 & 09 CRS 767 (Wilson Co.) (last searched on Sept. 6, 2017); Editorial, *A Case Closes*, NEWS & OBSERVER, Feb. 18, 2009.

2. See N.C. CIPRS, Case Details for State v. Paula Harrison, Nos. 10 CRS 52899-52900 (Johnston Co.) (last searched on Sept. 6, 2017); Thomasi McDonald, *Daughter of Wake Sheriff Makes Deal in Drug Case*, NEWS & OBSERVER, Jan. 12, 2011 (Crime/Safety).

their crimes. Johnson was an eighteen year-old black male at the time of his offense.³ Harrison was a forty-two year-old white female and the daughter of a sheriff at the time of her crimes.⁴ Despite these differences, the outcome of these defendants' cases was the same. The trial court judges accepted their guilty pleas.⁵ Then, instead of selecting a punishment and pronouncing a judgment in accordance with the sentencing scheme created by North Carolina's legislature, the judge in each case ordered that the prayer for judgment would be continued.⁶ Neither judge imposed imprisonment, probation, a fine, or any other legally recognized component of criminal punishment in North Carolina.⁷ Both defendants escaped the immediate imposition of punishment for their offenses and have not had a final judgment entered against them.⁸

3. See NC CIPRS, Case Details for State v. Johnson, *supra* note 1, No. 09 CRS 767 at 1.

4. See N.C. CIPRS, Case Details for State v. Harrison, *supra* note 2, No. 10 CRS 52899 at 1; McDonald, *supra* note 2.

5. See NC CIPRS, Case Details for State v. Johnson, *supra* note 1, No. 09 CRS 767 at 1; McDonald, *supra* note 2.

6. See NC CIPRS, Case Details for State v. Johnson, *supra* note 1, No. 09 CRS 767 at 1; McDonald, *supra* note 2.

7. The only authorized types of criminal punishment in North Carolina are "death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State." N.C. Const. art. XI, § 1.

8. According to computerized public records maintained by the North Carolina Administrative Office of the Courts, James Johnson's case was disposed on the date of the order continuing the prayer for judgment, but Paula Harrison's case is still pending with no final judgment having been entered and with

When someone is charged with committing a criminal or motor vehicle offense, the expectation is that some type of punishment will follow a finding of guilt, whether that finding is based on a guilty plea or on a verdict after trial.⁹ Defendants are expected to stand before a judge and wait to hear the judge pronounce their fate. In that moment, the defendant, court actors, and any observers wonder what is going to happen. Will there be probation or a period of incarceration? Will there be a fine and court costs to pay? Will the judge be harsh or merciful because of information presented by the prosecution and the defense?¹⁰ As illustrated by the Johnson and Harrison cases—North Carolina trial court judges can frustrate expectations and avoid pronouncing any judgment within the sentencing parameters set by the North Carolina legislature if they decide to enter a prayer for judgment continued.

the last scheduled court date occurring in 2015. *See* N.C. CIPRS, Case Details for State v. Harrison, *supra* note 2; N.C. CIPRS, Case Details for State v. Johnson, *supra* note 1.

9. *See, e.g.*, Pat Stith, et al., *State Leaders Vow to Close Speed Loopholes*, NEWS & OBSERVER, May 22, 2007.

10. Under North Carolina law, trial court judges are empowered with discretion in many cases to choose the proper punishment for a defendant from a defined range of penalties. *See generally* N.C. Gen. Stat. §§ 15A-1340.10 *et seq.*, 20-176, & 20-179 (2015).

The prayer for judgment continued is a procedural device where, in an exercise of discretionary authority, trial judges may refrain from entering a final judgment in any case they deem appropriate.¹¹ North Carolina trial court judges have exercised this type of discretionary authority since the nineteenth century.¹² The prayer for judgment continued has remained in use through modern times because it serves important purposes within the North Carolina legal system. Specifically, a trial judge's authority to continue prayer for judgment provides (1) procedural fairness; (2) the ability to encourage resource-saving resolutions in cases; and (3) an opportunity to innovate alternative sentencing solutions when necessary.¹³

In the past, the North Carolina legislature appeared to acknowledge the utility of the prayer for judgment continued because it did very little to regulate the courts' use of the device, and it did not explicitly restrict a judge's authority to order a prayer for judgment continued in any criminal or motor vehicle cases.¹⁴ The

11. See SAMUEL J. RANDALL, IV & RYAN D. STUMP, CRIMINAL PROCEDURE IN NORTH CAROLINA § 12.5, at 913 (Matthew Bender, 4th ed. 2015).

12. See *State v. Crook*, 115 N.C. 760, 20 S.E. 513 (1894); *State v. Bennett*, 20 N.C. 170, 178 (1838). See also Albert Coates, *Punishment for Crime in North Carolina*, 17 N.C. L. REV. 205, 215 (1938-1939).

13. See Part III *infra*.

14. See Part IV *infra*.

twenty-first century, however, has been the advent of direct legislative restrictions that carve away at judicial authority and ignore the important purposes served by the courts' centuries-long power to continue prayers for judgment.¹⁵ In response to this trend, trial courts should take steps to encourage legislators—when contemplating additional restrictions—to be cautious and mindful of the important purposes served by the courts' use of this device. The significant and historic role of the prayer for judgment continued in the North Carolina legal system must be maintained.

To provide context, Part II of this article summarizes North Carolina legal doctrine regarding trial courts' use of the prayer for judgment continued in criminal and motor vehicle cases. Part III then examines the three significant purposes served by the trial court system's use of this device in various cases. Part IV explores the legislative response to prayers for judgment continued over time. After addressing the source and scope of the North Carolina legislature's authority in this area, Part IV describes the longstanding legislative

15. See Part IV *infra*.

tradition of avoiding direct regulation of the courts' use of prayers for judgment continued and compares that tradition with the recent trend of restricting the trial courts' use of the device in various criminal and motor vehicle cases. Finally, Part V proposes a few ways that the court system might encourage legislators to return to a tradition of restraint that will preserve the important benefits of having the prayer for judgment continued to be available to North Carolina trial judges.

II. WHAT DOES IT MEAN FOR A COURT TO CONTINUE THE PRAYER FOR JUDGMENT?: A DOCTRINAL OVERVIEW

Once a defendant is adjudged to be guilty of a criminal or motor vehicle offense in North Carolina, a trial court judge has three options: “(1) To pronounce judgment and place it into immediate execution; (2) to pronounce judgment and suspend or stay its execution; [or] (3) to continue prayer for judgment.”¹⁶ A “prayer for judgment” is simply the State’s request, through the prosecutor, that a sentence be imposed and a judgment be entered after a defendant has been

16. *State v. Griffin*, 246 N.C. 680, 682, 100 S.E.2d 49, 50 (1957). *See also* N.C. Gen. Stat. § 20-4.01(4a) (2015) (acknowledging that courts may continue the prayer for judgment in a motor vehicle case).

found to be guilty of an offense.¹⁷ The “prayer for judgment continued” is when a judge deliberately “refuse[s] to enter a final judgment” against the defendant.¹⁸ The prayer for judgment continued is a procedural device that has been used in the North Carolina court system since at least the nineteenth century.¹⁹ With only a few exceptions,²⁰ North Carolina trial judges have broad discretion to use this device and have used it in cases as varied as (1) minor motor vehicle offenses;²¹ (2) misdemeanor offenses such as simple assault;²² and (3) serious felony offenses, such as robbery with a dangerous weapon²³ or, as referenced above, the drug trafficking charges faced by Paula Harrison.²⁴ Although case law and statutes do not label the

17. See SAMUEL J. RANDALL, IV & RYAN D. STUMP, *CRIMINAL PROCEDURE IN NORTH CAROLINA* § 12.5, at 914 (Matthew Bender, 4th ed. 2015). See also *Griffin*, 246 N.C. at 683, 100 S.E.2d at 51.

18. SAMUEL J. RANDALL, IV & RYAN D. STUMP, *CRIMINAL PROCEDURE IN NORTH CAROLINA* § 12.5 at 913 (Matthew Bender, 4th ed. 2015).

19. See *Whedbee v. Powell*, 41 N.C. App. 250, 253, 254 S.E.2d 645, 647 (1979) (“The inherent power of the court . . . to direct that prayer for judgment be continued[] has long been recognized in this jurisdiction.”) (citing *Crook*, 115 N.C. at 760, 20 S.E. at 513).

20. Currently, the exceptions to a trial judge’s discretionary authority to continue prayer for judgment are for the following types of charges: driving while impaired, speeding more than twenty-five miles per hour over the limit, passing a school bus that has its stop arm activated, soliciting for the purpose of prostitution, high-level felonies, and capital murder. See James M. Markham & Shea Riggsbee Denning, *NORTH CAROLINA SENTENCING HANDBOOK WITH FELONY, MISDEMEANOR, AND DWI SENTENCING GRIDS* at 14 (U.N.C. School of Gov’t 2016-2017 ed.); also N.C. Gen. Stat. § 15A-2000 (2015).

21. *E.g.*, *Florence v. Hiatt*, 101 N.C. App. 539, 540, 400 S.E.2d 118, 119 (1991) (noting the entry of a prayer for judgment continued on a charge of operating a motor vehicle without a license).

22. *E.g.*, *Simeon v. Hardin*, 339 N.C. 358, 363, 451 S.E.2d 858, 863 (1994).

23. *E.g.*, *State v. Van Trussell*, 170 N.C. App. 33, 35, 612 S.E.2d 195, 197 (2005), *cert. denied* 359 N.C. 856, 620 S.E.2d 196.

24. N.C. CIPRS, Case Details for *State v. Harrison*, *supra* note 2.

various ways in which trial courts use prayers for judgment continued, for purposes of discussion in this article, the situations are categorized as follows: (1) the temporary prayer for judgment continued; (2) the conditional prayer for judgment continued; and (3) the unconditional prayer for judgment continued.²⁵

A temporary prayer for judgment continued is when the trial court judge does not immediately pronounce a judgment and sentence against a defendant but, instead, continues the sentencing hearing for a short, determinate period of time, with the intent to impose a judgment and sentence in the near future.²⁶ As specifically approved by the North Carolina Supreme Court, a trial judge might use a temporary prayer for judgment continued “for judicial purposes . . . so as to afford time to consider post-trial motions, to prevent a miscarriage of justice, and for other like purposes contemplated by law and justice.”²⁷ For example, after a lengthy trial, a judge might temporarily

25. This same labeling scheme was previously used by this author in an article calling for North Carolina’s criminal practitioners to be attentive to issues surrounding legislative restrictions on the courts’ authority to continue prayer for judgment in cases. See Dionne R. Gonder-Stanley, *Let’s Talk about the Prayer for Judgment Continued (‘PJC’)*, THE TRUE BILL, Vol. 23, No. 2 at 7 – 9 (Crim. Justice Sec. of N.C. Bar Ass’n, Feb. 2012).

26. See, e.g., *State v. Absher*, 335 N.C. 155, 155-156, 436 S.E.2d 365, 365 (1993) (where the trial court initially continued prayer for judgment for thirty days and eventually pronounced the final judgment and sentence five months after the defendant pled guilty).

27. In re Greene, 297 N.C. 305, 307, 255 S.E.2d 142, 144 (1979).

continue the prayer for judgment to provide time for a presentence investigation, and for the parties to otherwise prepare for the sentencing hearing.²⁸ When the short-term continuance is over, the judge will hold the sentencing hearing and pronounce a final judgment.²⁹

In contrast to a temporary prayer for judgment continued, a trial judge might use a prayer for judgment continued with the intent that, barring unforeseen or changed circumstances, a final judgment and sentence will never be entered for the offense.³⁰ If the court uses this approach in an individual case, the prayer for judgment continued may be imposed with or without conditions.³¹ These conditional and unconditional prayers for judgment continued are long-term or indefinite in duration,³² and may become the permanent disposition of the

28. *See, e.g., State v. Fuller*, 48 N.C. App. 418, 418-19, 268 S.E.2d 879, 880 (where trial court continued prayer for judgment to await a presentence investigation and then pronounced judgment approximately one month later), *cert. denied* 301 N.C. 403, 273 S.E.2d 448 (1980).

29. *See id.*

30. *See, e.g., Van Trusell*, 170 N.C. App. at 43, 612 S.E.2d at 202 (trial judge issued a prayer for judgment continued for two charged offenses because defendant's sentence for other related offenses appeared to be "enough time" in prison on the facts of the case), *cert. denied*, 359 N.C. 856, 620 S.E.2d 196 (2005).

31. *Compare State v. Perry*, 316 N.C. 87, 94-95, 340 S.E.2d 450, 455 (1986) (involving the entry of a prayer for judgment continued without conditions) *with Barbour v. Scheidt*, 246 N.C. 169, 170, 97 S.E.2d 855, 856 (1957) (involving the entry of prayers for judgment continued that were conditioned upon the payment of court costs).

32. *See, e.g., Van Trusell*, 170 N.C. App. at 43, 612 S.E.2d at 202 (trial judge originally continued the prayer for judgment indefinitely), *cert. denied* 359 N.C. 856, 620 S.E.2d 196 (2005); *Perry*, 316 N.C. at 94, 340 S.E.2d at 455 (1986) (trial court continued the prayer for judgment "from term to term and session to session" for no more than five years); *State v. Cheek*, 31 N.C. App. 379, 380, 229 S.E.2d 227, 227 (1976) (noting trial court order to continue the prayer for judgment for five years).

cases in which they are used.³³ The doctrinal rules applicable to such prayers for judgment continued differ based on whether they are with or without conditions.³⁴

When using conditional prayers for judgment continued, trial judges provide defendants with an opportunity to mitigate or avoid the statutorily defined punishment for the offenses by requiring the defendants to satisfy certain explicit conditions.³⁵ A trial court judge may not order a conditional prayer for judgment continued without a defendant's consent,³⁶ but consent can be implied from a defendant's failure to request the entry of judgment.³⁷ Also, a trial court judge has no authority to enter a conditional prayer for judgment continued when a defendant has been adjudged to be guilty of an offense for

33. See N.C. Gen. Stat. § 15A-1381 (2015) (defining "disposition" for criminal cases to include a guilty verdict or plea "even though prayer for judgment . . . be continued").

34. See *State v. Absher*, 335 N.C. 155, 157, 436 S.E.2d 365, 366 (1993) ("In this state, we have made a distinction between cases in which prayer for judgment is continued with conditions imposed and cases in which prayer for judgment is continued without any conditions.").

35. See *Cheek*, 31 N.C. App. at 380, 229 S.E.2d at 227 (trial court continued the prayer for judgment on condition that the defendant avoid breaking any laws and not attempt a prison escape).

36. See *State v. Jaynes*, 198 N.C. 728, ___, 153 S.E. 410, 411 (1930) (reversing a trial court's issuance of a conditional prayer for judgment continued when the defendant objected to the order); *State v. Burgess*, 192 N.C. 668, ___, 135 S.E. 771, 772 (1926) (finding that a trial court may not enter a conditional PJC over a defendant's objection because the defendant "had a substantial right that some final judgment be rendered so as to enable him to preserve his right under the law").

37. See *State v. Degree*, 110 N.C. App. 638, 641-642, 430 S.E.2d 491, 493 (1993) (holding that defendant's failure to request entry of judgment was "tantamount to his consent").

which the legislature has enacted a mandatory sentencing scheme and procedure.³⁸

With respect to the conditions attached to a prayer for judgment continued, a trial court may not impose conditions that are tantamount to punishment.³⁹ If the pronounced conditions are inappropriately punitive, the court's order "loses its character as a [prayer for judgment continued] and becomes a final judgment."⁴⁰ If the rule were otherwise, a court would essentially be able to punish a defendant more than once for an offense—a violation of constitutional principles.⁴¹ Thus, the conditions a court may properly attach to a prayer for judgment continued include the payment of court costs and the requirement that a defendant "obey the law."⁴² The imposition of any other conditions will result in the conditional prayer for judgment

38. *See In re Greene*, 297 N.C. 305, 312, 255 S.E.2d 142, 147 (1979) (holding "that the Courts at North Carolina do not have an 'inherent' power to continue prayer for judgment on conditions . . . where the sentence is made mandatory by the General Assembly" in an impaired driving case). *See also In re Tucker*, 348 N.C. 677, 682, 501 S.E.2d 67, 71 (1998) (declining to discipline a trial judge who entered PJs in impaired driving cases because the judge "conceded that he did not have authority to continue prayer for judgment in a DWI case" after relevant case law was brought to his attention).

39. *See State v. Griffin*, 246 N.C. 680, 683, 100 S.E.2d 49, 51 (1957).

40. *State v. Brown*, 110 N.C. App. 658, 659, 430 S.E.2d 433, 434 (1993); *see also State v. Popp*, 197 N.C.App. 226, 228, 676 S.E.2d 613, 614 (2009).

41. *See Griffin*, 246 N.C. at 683, 100 S.E.2d at 51 ("Punishment having been once inflicted, the court has exhausted its power and cannot thereafter impose additional punishment."). *See also U.S. Const. amend. V.*

42. *Brown*, 110 N.C. App. at 659, 430 S.E.2d at 434 (1993).

continued being transformed into a final (though possibly illegal) judgment.⁴³ If a court issues a conditional prayer for judgment continued and the defendant fails to satisfy the stated conditions, the trial court may proceed to enter a final judgment and sentence in accordance with the legislatively prescribed sentencing scheme.⁴⁴ In contrast, if a defendant satisfies the stated conditions, the North Carolina Supreme Court has disapproved of a trial court's subsequent attempt to sentence that defendant.⁴⁵

In contrast to the conditional prayer for judgment continued, an unconditional prayer for judgment continued occurs when a judge imposes no conditions on a defendant, but purposely fails to enter a final judgment and sentence.⁴⁶ It has long been held that a trial judge

43. See *Popp*, 197 N.C. App. at 228, 676 S.E.2d at 615 (finding conditions such as community service, a curfew, and drug testing to be tantamount to punishment); *Brown*, 110 N.C. App. at 660, 430 S.E.2d at 434 (finding mental health treatment to be a condition that transforms a PJC into a final judgment); *Griffin*, 246 N.C. at 683, 100 S.E.2d at 51 (finding the imposition of a fine to be "inconsistent" with the entry of a PJC).

44. See *State v. Ray*, 212 N.C. 748, 194 S.E. 472, 473 (1938) ("The power of the superior court to continue the prayer for judgment . . . and thereafter, upon determination that the conditions had been breached, to impose sentence and execute the judgment, has been upheld by this court in numerous cases.").

45. See *State v. Hilton*, 151 N.C. 687, ___, 65 S.E. 1011, 1014 (1909) (stating that, where defendant was sentenced to imprisonment after satisfying the conditions of the prayer for judgment continued, the trial court engaged in "a capricious exercise of arbitrary power unknown to the common law and disapproved and condemned by many well-considered decisions of the present time"). None of the appellate decisions issued since *Hilton* have modified this basic principle of law.

46. See *State v. Van Trusell*, 170 N.C. App. 33, 612 S.E.2d 195, *cert. denied*, 359 N.C. 856, 620 S.E.2d 196 (2005).

may issue this unconditional type of prayer for judgment continued without a defendant's consent.⁴⁷ With unconditional prayers for judgment continued, "there is no judgment, no appeal will lie, and the case remains in the trial court for appropriate action."⁴⁸ If a defendant does not object to the prayer for judgment continued or request the entry of judgment sooner, the defendant's consent to the trial court's action will be implied.⁴⁹ However, if a trial court judge does not impose a final judgment and sentence within a reasonable period of time, or if the defendant suffers prejudice as a result of the delayed entry of judgment, the court will lose jurisdiction and have no authority to impose a judgment and sentence upon the defendant later.⁵⁰ The reasonableness of any delay between the ascertainment of a defendant's guilt and the entry of a final judgment will depend upon "the reason for the delay, the length of the delay, whether defendant has consented to the delay, and any actual prejudice to defendant

47. See *Griffin*, 246 N.C. at 682, 100 S.E.2d at 51; *State v. Graham*, 225 N.C. 217, 219, 34 S.E.2d 146, 147 (1945); *State v. Burgess*, 192 N.C. 668, ___, 135 S.E.2d 771, 772 (1926).

48. *State v. Pledger*, 257 N.C. 634, 638, 127 S.E.2d 337, 340 (1962). See also *State v. Perry*, 316 N.C. 87, 94-95, 340 S.E.2d 450, 455 (1986) (dismissing defendant's appeal of two offenses where the trial court entered only unconditional prayers for judgment continued).

49. See *State v. Craven*, 205 N.C. App. 393, 405, 696 S.E.2d 750, 757 (2010), *rev'd on other grounds*, 367 N.C. 517, 44 S.E.2d 458 (2013); *State v. Degree*, 110 N.C. App. 638, 641-642, 430 S.E.2d 491, 493 (1993).

50. See *State v. Absher*, 335 N.C. 155, 156, 436 S.E.2d 365, 366 (1993).

which results from the delay.”⁵¹ Using this analysis, North Carolina appellate courts have approved delays of up to seven years between the issuance of the unconditional prayer for judgment continued and the entry of a final judgment and sentence.⁵² Similarly, the pronouncement of a final judgment will be upheld even if the judge who presides over the sentencing hearing is not the same judge who presided when the defendant was adjudged to be guilty of the offense.⁵³

III. PURPOSES SERVED BY THE USE OF PRAYERS FOR JUDGMENT CONTINUED IN THE NORTH CAROLINA COURT SYSTEM

North Carolina courts have used procedural devices like the prayer for judgment continued since the 1800’s,⁵⁴ and they still enter

51. *State v. Degree*, 110 N.C. App. at 641, 430 S.E.2d at 493 (cited with approval by the North Carolina Supreme Court in *State v. Absher*, 335 N.C. 155, 157, 436 S.E.2d 365, 366 (1993) (“Our holding in this case is consistent with” the decision in *Degree*)).

52. *See Craven*, 205 N.C. App. at 405, 696 S.E. 2d at 757 (using the *State v. Degree* analysis to find a two-year delay between a prayer for judgment continued and sentencing to be reasonable); *State v. Van Trusell*, 170 N.C. App. 33, 38-44, 612 S.E.2d 195, 201 (reviewing constitutional due process principles to determine that the four-year delay between a PJC and the final judgment and sentence did not constitute judicial or prosecutorial vindictiveness), *cert. denied*, 359 N.C. 856, 620 S.E.2d 196 (2005); *State v. Lea*, 156 N.C. App. 178, 180-182, 576 S.E.2d 131, 133-134 (2003) (upholding judgment after a five-year delay between the entry of the prayer for judgment continued and the final sentence); *State v. Pelley*, 221 N.C. 487, ___, 20 S.E.2d 850, 856-857 (1942) (upholding a delay of almost seven years between PJC and final judgment when prayer for judgment continued was originally for a five-year term and the defendant’s flight from the jurisdiction prevented the entry of judgment any sooner).

53. *See State v. Sauls*, 291 N.C. 253, 263-264, 230 S.E.2d 390, 396 (1976).

54. *See State v. Crook*, 115 N.C. 760, 20 S.E. 513 (1894); *State v. Bennett*, 20 N.C. 170, 178 (1838). *See also Coates*, *supra* note 8, at 215.

orders continuing the prayer for judgment in various criminal and motor vehicle cases today.⁵⁵ The reason for this longevity is that a court's power to continue prayer for judgment in a case is important to the administration of justice in North Carolina. In particular the prayer for judgment continued allows courts to achieve procedural fairness,⁵⁶ to encourage resource-saving case resolutions,⁵⁷ and to innovate when necessary to reach appropriate outcomes in the criminal and motor vehicle cases that come before them.⁵⁸ Each of these purposes and example cases are discussed below in turn.

A. PROCEDURAL FAIRNESS

North Carolina courts use prayers for judgment continued to help them achieve procedural fairness by giving the parties who ap-

55. See, e.g., *State v. Curlee*, __ N.C. App. __, 795 S.E.2d 266, 268 (2016); Michael Gordon, *No High School Graduation: Immigrant Teen in North Carolina Must Leave for Mexico*, NEWS & OBSERVER, Mar. 29, 2017.

56. See N.C. Gen. Stat. § 15A-1334 (2015) (providing that courts may grant a continuance of the sentencing hearing for good cause); *State v. Fuller*, 48 N.C. App. 418, 418-419, 268 S.E.2d 879, 880 (quoting trial court order to continue the prayer for judgment to conduct a presentence investigation), *cert. denied*, 301 N.C. 403, 273 S.E.2d 448 (1980).

57. See, e.g., N.C. CIPRS, Case Details for *State v. Johnson*, *supra* note 1 (where the charge of accessory after the fact was dismissed upon a guilty plea and continuance of the prayer for judgment on the charge of misprision of a felony); *Smith v. Gilchrist*, 749 F.3d 302, 305 (2014) (describing a program where individuals charged with motor vehicle offenses could take a driving course, pay costs, and receive a prayer for judgment continued); *Hilton*, 151 N.C. 687, 65 S.E. 1011.

58. See Part III(c) *infra*.

appear before the court an opportunity to present information and arguments relevant to the court's sentencing decision.⁵⁹ For example, after a lengthy and hotly contested trial ends in a guilty verdict, a trial judge may continue the prayer for judgment for a short period to allow the parties to gather witnesses or otherwise prepare for the sentencing hearing.⁶⁰ This procedure ensures that the prosecution and the defense can present their positions well when the length and emotions of the trial might have impeded their ability to be prepared for sentencing immediately after the verdict was read.

As an additional example, a trial judge continued the prayer for judgment in a case where the defendant failed to return to court after a break and was absent when the jury returned a guilty verdict.⁶¹ In this instance, procedural fairness was achieved through the entry

59. See, e.g., *State v. Fuller*, 48 N.C. App. 418, 418-419, 268 S.E.2d 879, 880 (quoting trial court order to continue the prayer for judgment to conduct a presentence investigation), *cert. denied*, 301 N.C. 403, 273 S.E.2d 448 (1980).

60. See N.C. Gen. Stat. § 15A-1334 (2015) (providing that courts may grant a continuance of the sentencing hearing for good cause); *State v. Fuller*, 48 N.C. App. 418, 418-419, 268 S.E.2d 879, 880 (quoting trial court order to continue the prayer for judgment to conduct a presentence investigation), *cert. denied*, 301 N.C. 403, 273 S.E.2d 448 (1980).

61. See *State v. Curlee*, ___ N.C. App. ___, 795 S.E.2d 266, 268 (2016).

of the prayer for judgment continued because it effectuated the defendant's right to be present and to be heard when the judgment was pronounced.⁶²

Finally, a prayer for judgment continued ensures procedural fairness in those cases where multiple, related charges are resolved at different times.⁶³ For example, when a defendant was found guilty of one charge, but had to be retried on a related charge due to a hung jury, the trial court continued the prayer for judgment on the resolved charge, held the second trial, and then conducted a sentencing hearing.⁶⁴ The parties in such a case both had fair opportunities to account for the outcome of all, not just part, of the defendant's charges at the sentencing proceeding.⁶⁵

B. RESOURCE-SAVING RESOLUTION OF CASES

Serving as another contribution to the administration of justice in North Carolina, prayers for judgment continued are sometimes

62. *See* State v. Pope, 257 N.C. 326, 330, 126 S.E.2d 126, 129 (1962) (describing the nature of a defendant's right to be present at the time of sentencing).

63. *See, e.g.,* State v. Cornelius, 219 N.C. App. 329, 331, 723 S.E.2d 783, 785 (2012) (where trial court entered a prayer for judgment continued on a first degree burglary charge until the defendant could be retried on a related murder charge).

64. *See* State v. Cornelius, 219 N.C. App. 329, 331, 723 S.E.2d 783, 785 (2012) (where trial court entered a prayer for judgment continued on a first degree burglary charge until the defendant could be retried on a related murder charge).

65. *See id.* at 331, 723 S.E.2d at 785.

used to encourage resource-saving resolutions of criminal and motor vehicle cases.⁶⁶ When cases are resolved efficiently, cooperatively, and without the need for extended court involvement, resources are saved and justice is served.⁶⁷ Appellate court decisions reveal that prayers for judgment continued have served this purpose for over one hundred years.⁶⁸

In a 1907, *State v. Hilton*, a defendant appeared in superior court to face three counts of unlawful sale of liquor.⁶⁹ Although he had witnesses ready to support his defense at trial, the court did not have adequate time to hear the case during that term of court.⁷⁰ To resolve the charges more efficiently than awaiting a trial at a subsequent term of court, the parties entered into a plea agreement.⁷¹

66. See, e.g., N.C. CIPRS, Case Details for *State v. Johnson*, *supra* note 1 (where the charge of accessory after the fact was dismissed upon a guilty plea and continuance of the prayer for judgment on the charge of misprision of a felony); *Smith v. Gilchrist*, 749 F.3d 302, 305 (2014) (describing a program where individuals charged with motor vehicle offenses could take a driving course, pay costs, and receive a prayer for judgment continued).

67. See N.C. Comm'n on Admin. of L. & Just., Final Rep. at 21 (Mar. 2017) (noting how a "system that fails to use its resources effectively or manage its work efficiently will not serve justice").

68. One of the earliest examples is *Hilton*, 151 N.C. 687, 65 S.E. 1011.

69. See *id.*

70. *Id.* at ___, 65 S.E. at 1012.

71. *Id.*

Upon the defendant's guilty plea to the three charges, the judge ordered the defendant to pay a fine and court costs on one count,⁷² suspended the judgment on the second count on the condition that the defendant pay the costs of court, and continued the prayer for judgment on the third count on the condition that the defendant pay costs and appear back in court from term to term to show good behavior.⁷³ Although the primary issue in *Hilton* involved a subsequent judge's decision to enter judgment after the defendant appeared from term to term and was discharged in 1908,⁷⁴ it was clear that the prayer for judgment continued facilitated the initial cooperative resolution of the case.⁷⁵

A more recent example of a prayer for judgment continued being used to facilitate the resource-saving resolution of a case is found in the disposition of the charges against James Johnson, who was introduced at the beginning of this article.⁷⁶ Johnson was first

72. *Id.* at ___, 65 S.E. at 1101.

73. *Id.*

74. *Hilton*, 151 N.C. at ___, 65 S.E. at 1012.

75. *See id.*

76. *See* N.C. CIPRS, Case Summary for State v. James Johnson, Nos. 04 CRS 53580-53581 (Wilson Co.) (last searched Sept. 20, 2017); N.C. CIPRS, Case Details for State v. Johnson, *supra* note 1.

charged with murder, rape, robbery, and kidnapping based on statements, which were later recanted, from the confessed killer.⁷⁷ When it was alleged that Johnson's three-year stay in jail was a result of racism, the case was reviewed, the primary charges were dropped, and Johnson was charged instead as an accessory after the fact.⁷⁸ Although a lengthy trial could have occurred because of Johnson's claim that his limited involvement in the crime was out of fear, the prayer for judgment continued gave closure to individuals on both sides of the case.⁷⁹

Turning to one of the most popular uses of the prayer for judgment continued as a resource-saving means of resolving cases, trial courts often use this device for motor vehicle offenses.⁸⁰ In North Carolina, motor vehicle offenses include everything from non-

77. See N.C. CIPRS, Case Summary for State v. Johnson, *supra* note 59; *A Case Closes*, *supra* note 1.

78. See N.C. CIPRS, Case Summary for State v. Johnson, *supra* note 59; N.C. CIPRS, Case Details for State v. Johnson, *supra* note 1, No. 07 CRS 56748 at 1-2; *A Case Closes*, *supra* note 1; *James Johnson Pleads Guilty in Wilson Murder Case*, WRAL.COM (Mar. 9, 2009), <http://www.wral.com/news/local/story/4543315/> (last visited Nov. 1, 2017).

79. *James Johnson Pleads Guilty in Wilson Murder Case*, WRAL.COM (Mar. 9, 2009), <http://www.wral.com/news/local/story/4543315/> (last visited Nov. 1, 2017) (describing the reaction of the defendant's father and the victim's father to the case resolution).

80. See, e.g., *Smith v. Gilchrist*, 749 F.3d 302, 305 (2014) (describing a program where individuals charged with motor vehicle offenses could take a driving course, pay costs, and receive a prayer for judgment continued).

criminal infractions⁸¹ to misdemeanors⁸² and felonies,⁸³ with a wide variety of punishments defined by statute.⁸⁴ In addition to the penalties prescribed for such offenses, defendants face collateral consequences, such as driver's license points and increased costs for the motor vehicle insurance required of all drivers.⁸⁵ By giving defendants an opportunity to plead guilty and avoid such consequences, the courts' use of prayers for judgment continued has "substantially reduced the number of cases that the DA's office and the courts [are] required to handle, freeing up resources that could be used for other matters."⁸⁶

C. OPPORTUNITY TO INNOVATE WHEN NECESSARY

Another important function served by prayers for judgment continued in the administration of justice is providing trial judges with an opportunity to innovate when necessary to ensure that just

81. *See, e.g.*, N.C. Gen. Stat. §§ 20-35, 20-124(a), 20-135.2A & 20-176 (2015) (statutes defining as offenses the failure to notify DMV of address change, the failure to maintain vehicle breaks, and seat belt violations).

82. *See, e.g.*, N.C. Gen. Stat. §§ 20-28 & 20-138.1 (2015) (provisions defining the offenses of driving while license suspended and driving while impaired, respectively).

83. *See, e.g.*, N.C. Gen. Stat. §§ 20-138.5 & 20-141.4 (defining the offenses of habitual impaired driving and felony death by vehicle, respectively).

84. *See* Robert L. Farb, 2015 PUNISHMENT CHART FOR NORTH CAROLINA CRIMES & MOTOR VEHICLE OFFENSES at 65-94 (Univ. of N.C. Sch. of Gov't, 2016).

85. *See* Smith v. Gilchrist, 749 F.3d 302, 305 n.2 (2014) (citing N.C. Gen. Stat. §§ 20-4.01(4a) (a)(4) & 58-36-75(f) (2014)).

86. *Id.* at 305.

punishments are meted out in the cases that come before them. This use of prayers for judgment continued occurs when the legislative process directly fails to address the practical realities of cases generally, or when the issues involved in a specific case are anomalous and unlikely to have been considered by the legislature when prescribing the penalties to be applied to an offense.⁸⁷

One can turn to the history of courts' use of prayers for judgment continued for an example of innovation occurring when the legislative process failed to address practical realities.⁸⁸ Trial courts of the nineteenth and early twentieth centuries would often suspend the imposition of final judgments, enter conditional prayers for judgment continued, and provide defendants with a chance to avoid the harsh, prescribed punishments for their offenses.⁸⁹ During much of this time period, the prescribed penalty for most serious offenses was

87. See SAMUEL J. RANDALL, IV & RYAN D. STUMP, *CRIMINAL PROCEDURE IN NORTH CAROLINA* § 12.5, at 914 (Matthew Bender, 4th ed. 2015).

88. Compare Coates, *supra* note 12, at 212-213 with State v. Crook, 115 N.C. 760, ___, 20 S.E. 513, 514 (1894) (approving as "beneficial" the use of procedural devices to allow defendants to avoid legislatively authorized punishments).

89. See State v. Miller, 225 N.C. 213, 215, 34 S.E.2d 143, 145 (1945) (noting that the suspended "imposition or execution of sentence on condition is favorable to the defendant in that it postpones punishment and gives him an opportunity to escape it altogether"); State v. Crook, 115 N.C. 760, ___, 20 S.E. 513, 514 (1894) (noting that the practice of suspending judgments "has proved very salutary, both in bringing about the reformation of petty offenders, and in the suppression, especially of certain classes, of offenses. The . . . beneficial effects of its judicious use have been made so manifest as to commend it both to the judges and the people.")

“death or some form of corporal punishment.”⁹⁰ Lesser crimes were penalized by imprisonment in facilities of such poor condition as to endanger life and health.⁹¹ The North Carolina legislature failed to respond to the practical reality that such penalties were not always appropriate for all defendants in all cases,⁹² but trial court judges still had to find a way to give appropriate sentences and do justice in the cases coming before them each day. Hence, in many cases in this time period, courts used prayers for judgment continued, but required defendants to do such things as pay court costs, pay a bond and make periodic appearances in court, pay restitution, and show good conduct.⁹³ If defendants failed to comply with the court’s conditions and

90. Coates, *supra* note 12, at 208.

91. *Id.* at 225.

92. In 1800, a bill proposing to limit the types of cases requiring the death penalty and to give trial judges more sentencing discretion in serious cases failed to pass in the North Carolina General Assembly. *See* Coates, *supra* note 12, at 212. Nevertheless, “in succeeding years [the] principle [behind the failed bill] was adopted in particular cases by slow degrees.” *Id.* at 213.

93. *See, e.g.*, *State v. Johnson*, 169 N.C. 311, 84 S.E. 767 (1915) (trial court continued prayer for judgment on the condition that the defendant have good behavior); *Hilton*, 151 N.C. 687, 65 S.E. 1011 (where trial judge continued the prayer for judgment on the condition that the defendant pay costs, pay an appearance bond, and appear in court to show good behavior from term to term); Coates, *supra* note 12, at 216 (describing various conditions imposed by trial courts). Under current doctrine, when continuing the prayer for judgment in a case, a trial court can no longer require conditions, such as restitution, that are tantamount to punishment. *See State v. Popp*, 197 N.C. App. 226, 676 S.E.2d 613 (2009).

ruined their second chance, the court would pronounce a final judgment and impose the prescribed penalty.⁹⁴

Even when the legislative process works properly, today's trial courts innovatively use the prayer for judgment continued as a tool to address individual cases that are anomalous. The types of issues arising in these anomalous cases include instances: (1) when defendants face collateral consequences unaccounted for in the sentencing laws applicable to their offenses;⁹⁵ (2) when defendants have been found guilty of multiple, related offenses;⁹⁶ or (3) when a judge "is convinced that the criminal conduct is out of character for the defendant, that the conduct will not be repeated, and the equities of the situation warrant giving the defendant a second chance."⁹⁷

There are a variety of anomalous cases where prayers for judgment continued were used in an attempt to allow defendants to

94. See *State v. Hoggard*, 180 N.C. 678, 103 S.E. 891 (1920) (upholding entry of judgment and sentence when defendant failed to fulfill the conditions upon which prayer for judgment had been continued).

95. See, e.g., *Gordon*, *supra* note 55 (describing an 18 year-old facing deportation after his arrest on an embezzlement charge that was resolved by a misdemeanor guilty plea with the prayer for judgment being continued).

96. See, e.g., *State v. Thompson*, 267 N.C. 653, 148 S.E.2d 613 (1966) (where defendant had 20 counts of forgery altogether, was sentenced to imprisonment on 12 counts, and was initially granted an unconditional prayer for judgment continued for three years on 8 counts).

97. SAMUEL J. RANDALL, IV & RYAN D. STUMP, *CRIMINAL PROCEDURE IN NORTH CAROLINA* § 12.5, at 914 (Matthew Bender, 4th ed.2015).

avoid collateral consequences.⁹⁸ One example is a case where, facing criminal charges, a defendant filed a civil complaint to allege an unconstitutional abuse of power by the local district attorney's office.⁹⁹ If the defendant's criminal charges were resolved by the entry of final judgments, the civil lawsuit would have been dismissed as moot.¹⁰⁰ However, by entering a prayer for judgment continued on one of the defendant's charges, the trial court was able to dispose of the criminal case and avoid imposing on the defendant the collateral consequence of ending his civil case without consideration of the substantive issues raised therein.¹⁰¹ It is highly unlikely that the legislature accounted for this type of civil collateral consequence when it prescribed the potential punishments for the defendant's offenses.¹⁰²

98. Although some of these uses of the prayer for judgment continued were successful as described herein, there are instances where they were unsuccessful. *See, e.g.,* *Britt v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 348 N.C. 573, 501 S.E.2d 75 (1998) (finding the entry of a prayer for judgment continued did not help that defendant avoid revocation of his law enforcement certification); *State v. Sidberry*, 337 N.C. 779, 781, 448 S.E.2d 798, 800 (1994) (where trial court continued prayer for judgment on drug offenses so as not "to interfere with defendant's right to testify" in his upcoming murder trial, but the guilty pleas on the drug offenses were nevertheless found to be admissible at that trial).

99. *See Simeon v. Hardin*, 339 N.C. 358, 363-65, 451 S.E.2d 858, 862-63 (1994)

100. *Id.* at 370, 451 S.E.2d at 866-67.

101. *Id.*

102. An additional example from a lower appellate court decision is *Little v. Little*, 226 N.C. App. 499, 739 S.E.2d 876 (2013). In *Little*, the court reviewed a trial court's issuance of a civil protective order against a defendant who faced a related criminal assault charge. *Id.* at 503, 739 S.E.2d at 879. The criminal court accepted the defendant's guilty plea but continued the prayer for judgment. Based on the prayer for judgment continued, the appellate court held that the civil trial court should not have taken

Appellate court decisions include multiple examples of trial courts using prayers for judgment continued as innovative tools to ensure just outcomes in cases that were anomalous because the defendants were guilty of multiple, related offenses.¹⁰³ In such cases, trial judges entered final judgments on some counts faced by the defendant, but ordered prayers for judgment continued on other counts.¹⁰⁴ With such defendants receiving significant punishment for offenses on which judgments were entered, the trial courts' continuance of the prayer for judgment was usually with the expectation that punishment might never be imposed for the remaining offenses.¹⁰⁵ Yet, as an innovation designed to produce just outcomes, the court

judicial notice of the criminal case nor relied upon that evidence to issue a protective order. *Id.* at 505, 739 S.E.2d at 881. This ruling meant the prayer for judgment continued should have saved this defendant, too, from this type of collateral consequence.

103. *See, e.g.*, *State v. Van Trusell*, 170 N.C. App. 33, 43, 612 S.E.2d 195, 202, *review denied*, 359 N.C. 856, 620 S.E.2d 196 (2005) (where the defendant received lengthy prison sentences on some charges and unconditional prayers for judgment continued on other, related charges); *State v. Graham*, 224 N.C. 347, 349, 30 S.E.2d 151, 152 (1944) (where defendant received an eighteen-month jail sentence on one count and prayers for judgment continued on two other counts).

104. *See, e.g.*, *State v. Graham*, 224 N.C. 347, 349, 30 S.E.2d 151, 152 (1944) (where defendant received an eighteen-month jail sentence on one count and prayers for judgment continued on two other counts); *State v. Pelley*, 221 N.C. 487, 20 S.E.2d 850 (1942) (where defendant received on one count a judgment of one-to-two years imprisonment that was suspended for five years on conditions and, on another count, an unconditional prayer for judgment continued for five years); *State v. Cheek*, 31 N.C. App. 379, 380, 229 S.E.2d 227, 227 (1976) (where defendant received a twenty-year sentence on one count and an indeterminate, unconditional prayer for judgment continued on another count).

105. *See, e.g.*, *State v. Van Trusell*, 170 N.C. App. 33, 43, 612 S.E.2d 195, 202, *review denied*, 359 N.C. 856, 620 S.E.2d 196 (2005) (noting that trial judge initially entered an indeterminate, unconditional PJC in the belief that the defendant had received "enough" punishment for other related offenses); *State v. Lea*, 156 N.C. App. 178, 180, 576 S.E.2d 131, 133 (2003) (noting that trial judge initially entered indeterminate, unconditional PJC's on two offenses because defendant received "long consecutive active sentences" for three other related offenses).

order in these cases could be a double-edged sword for the defendants. On one hand, the defendants immediately escaped punishment for some of their offenses.¹⁰⁶ On the other hand, if the judgments that were entered against such defendants were reversed on appeal, or if the defendants engaged in negative conduct which came to the attention of the court, they could be punished for their remaining offenses several years after guilt was established.¹⁰⁷ In these circumstances, the trial judge would be able to craft a final judgment that, accounting for the subsequent events in the case, allowed the defendant to “discharge the debt he owes society for the breach of its rules of good conduct.”¹⁰⁸ Had a final judgment instead of a prayer for judgment continued been entered at the outset, the court would not have been able to ensure that the defendant received an appropriate punishment overall.

106. *See, e.g.,* State v. Van Trusell, 170 N.C. App. 33, 43, 612 S.E.2d 195, 202, *review denied*, 359 N.C. 856, 620 S.E.2d 196 (2005) (where the defendant was initially not sentenced on two out of the four charges of which he was found guilty).

107. *See* State v. Craven, 205 N.C. App. 393, 696 S.E.2d 750 (2010) (upholding trial court’s authority to sentence the defendant for offenses, on which prayer for judgment had been continued in 2007, after the defendant was convicted of new offenses occurring in 2008); *Van Trusell*, 170 N.C. App. at 33, 612 S.E.2d at 195 (upholding trial court’s authority to enter judgment on charges although the prayer for judgment was continued until the defendant’s successful appeal of judgments rendered on other related charges).

108. State v. Graham, 225 N.C. 217, 220, 34 S.E.2d 146, 148 (1945).

The last type of anomalous cases where trial courts use prayers for judgment continued innovatively to reach appropriate outcomes are cases “where the equities of the situation warrant giving the defendant a second chance.”¹⁰⁹ This sometimes arises in cases, such as the James Johnson case discussed above, where all the parties and the court agree to and accept that the prayer for judgment continued is the appropriate method for disposing of the case.¹¹⁰ However, this situation may also arise in any number of cases that never reach the appellate courts nor appear in published court opinions. An example of this is when a trial court uses the prayer for judgment continued to craft a case disposition where a defendant is adjudged to be guilty of an offense that is more serious “on paper” than in reality. As an illustration, consider how, under North Carolina law, it is a felony for one to “knowingly and designedly by means of any kind of false pretense whatsoever . . . obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any

109. SAMUEL J. RANDALL, IV & RYAN D. STUMP, *CRIMINAL PROCEDURE IN NORTH CAROLINA* § 12.5 at 914 (Matthew Bender, 4th ed. 2015).

110. *See supra* Part III(b) (describing how a prayer for judgment continued was used to reach a cooperative, resource-saving resolution of the James Johnson case).

person.”¹¹¹ As defined, this crime encompasses defendants who succeed in obtaining another’s property by use of a false pretense as well as those defendants who attempt, but do not succeed, in doing so.¹¹² This crime is punishable as a felony whether the item or items at issue are worth ten dollars or ten million dollars.¹¹³ It is not difficult to imagine that a trial judge might find felony punishment to be inappropriate for a defendant whose conduct amounted to a mere attempt to use a false pretense to obtain property that was valued at ten dollars. If the equities of the case otherwise called for it, a prayer for judgment continued conditioned on the defendant’s payment of court costs and show of good behavior could be an appropriate and just outcome that would not have been possible under the regular sentencing statutes.

Thus, as demonstrated here, prayers for judgment continued are important tools in the administration of justice in the North Carolina court system. This is a reason why the device has been in use

111. N.C. Gen. Stat. § 14-100 (2015).

112. *Id.*

113. *See id.* (defining all violations of this statute as felonies but conduct involving items worth \$100,000 or more would be higher level felonies than for items worth less).

since the nineteenth century and a reason why it needs to be available for another century's worth of cases.

IV. THE PRAYER FOR JUDGMENT CONTINUED & THE NORTH CAROLINA LEGISLATURE

While the courts have used their power to enter prayers for judgment continued in criminal and motor vehicle cases for over a century, the North Carolina legislature has done very little to regulate the use of the device until relatively recently.¹¹⁴ Indeed, although the General Assembly sometimes enacted provisions to address indirectly matters related to prayers for judgment continued in some cases,¹¹⁵ it did not enact any explicit restrictions on the courts' practices until 2006.¹¹⁶ Since then, the legislature has shown itself to be more and more willing to carve away at trial courts' authority to use prayers for judgment continued, signaling a significant departure from a tradition of avoiding direct action in this arena.¹¹⁷

114. Compare *infra* Part IV(b) with *infra* Part IV(c).

115. See, e.g., N.C. Gen. Stat. § 15A-101(4a) (2015).

116. See N.C. Gen. Stat. § 20-217(e) (2015).

117. Compare *infra* Part IV(b) with *infra* Part IV(c).

A. THE GENERAL ASSEMBLY'S AUTHORITY TO REGULATE THROUGH LEGISLATION

Before examining the North Carolina General Assembly's actions with respect to prayers for judgment continued in criminal and motor vehicle cases, one must first examine its authority to regulate the courts at all in this context. Is the power to order a prayer for judgment continued an inherent judicial power which cannot be abridged? Or, as North Carolina's legislative body, does the General Assembly have authority to regulate, restrict, or possibly even abolish the practice entirely? The answers to these questions, although not always clear as a matter of North Carolina law,¹¹⁸ begin with the Constitution of North Carolina.

Pursuant to the North Carolina State Constitution, the "legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."¹¹⁹ This means that the General Assembly has the exclusive power to legislate, but it cannot "deprive the judicial department of any power or

118. See Stevens H. Clarke, *LAW OF SENTENCING, PROBATION, AND PAROLE IN NORTH CAROLINA* 1 (2d ed. 1997) (noting that the source of courts' authority to suspend sentences or continue prayers for judgment "is not as clear as the source of their authority to impose active imprisonment").

119. N.C. Const. art. I, § 6.

jurisdiction that rightfully pertains to it as a co-ordinate department of the government.”¹²⁰ On the subject of prayers for judgment continued, North Carolina appellate courts have often referred to the device as part of “the *inherent* power of a court having jurisdiction” over a case.¹²¹ An “inherent” judicial power is a power “within the scope of the court’s jurisdiction which a court possesses irrespective of specific grant by constitution or legislation.”¹²² Inherent judicial powers are those which cannot be regulated or restricted by the legislature.¹²³ If one agrees that the power to continue the prayer for judgment in a case is an inherent power of a trial court, then one has to conclude that the legislature cannot constitutionally enact any provision that might restrict or regulate courts in its use.¹²⁴ However, the North Carolina appellate courts’ occasional use of the “inherent” label to describe their power to continue prayers for judgment is not enough to end this inquiry.¹²⁵

120. N.C. Const. art. IV, § 1.

121. *State v. Miller*, 225 N.C. 213, 215, 34 S.E.2d 143, 145 (1945) (emphasis added). *See also* *State v. Griffin*, 246 N.C. 680, 682, 100 S.E.2d 49, 51 (1957); *Whedbee v. Powell*, 41 N.C. App. 250, 253, 254 S.E.2d 645, 647 (1979).

122. Raymond B. Mallard, *Inherent Powers of the Courts of North Carolina*, 10 WAKE FOREST L. REV. 1, 2 (Mar. 1974) (quoting 20 Am. Jur. 2d Courts § 78 (1965)).

123. *See* N.C. Const. art. IV, § 1.

124. *Id.*

125. *See In re Greene*, 297 N.C. 305, 308, 255 S.E.2d 142, 144 (1979).

In 1979, the Supreme Court of North Carolina directly confronted this question in the case of *In re Greene*,¹²⁶ where it specifically held that a trial court's authority in this context "is not a judicial power beyond statutory limitation."¹²⁷ *In re Greene* involved a trial court judge who refused to follow a sentencing statute that required defendants to serve at least three days in jail for a second conviction of driving under the influence of an intoxicating liquor.¹²⁸ Instead of following the statute after accepting the defendant's guilty plea, the trial judge pronounced a judgment of four months and then suspended all active time on the condition that the defendant comply with certain requirements.¹²⁹ Although the facts of *In re Greene* did not involve a prayer for judgment continued, the court's analysis encompassed more than its facts, with the court repeatedly referencing prayers for judgment continued throughout its opinion.¹³⁰ After reviewing the relevant case law and constitutional provisions, the court

126. 297 N.C. 305, 255 S.E.2d 142.

127. *Id.* at 311, 255 S.E.2d at 146.

128. *Id.* at 306-07, 255 S.E.2d at 143.

129. *Id.*

130. *See, e.g., id.* at 307, 255 S.E.2d at 144 ("We address . . . the claimed 'inherent' power of the court to *continue prayer for judgment* on conditions or suspend execution of sentence on conditions.") (emphasis added). In 1998, the North Carolina Supreme Court eased any doubts about the scope of its holding from *In re Greene* when it decided not to censure a trial judge for ordering prayers for judgment continued in impaired driving cases because the trial judge's actions were "a result of a *mistaken*, but honest, interpretation of the law" governing his authority to use prayers for judgment continued. *In re Tucker*, 348 N.C. 677, 683, 501 S.E.2d 67, 71 (1998) (emphasis added).

determined that the “inherent” label used in prior decisions to describe the power to enter prayers for judgment continued or suspended sentences was “highly misleading.”¹³¹ The court reasoned that courts’ use of these procedural devices is subject to legislative regulation because the “power to define a crime and prescribe its punishment originates with the legislative branch,”¹³² and the courts’ authority in this respect is “derive[d] from the legislative power to prescribe punishment.”¹³³ This analysis led the court to conclude that, when the legislature has given courts the discretion to choose the appropriate punishment for certain types of criminal and motor vehicle cases, trial judges may utilize a prayer for judgment continued as an exercise of that judicial discretion.¹³⁴ Concomitantly, when the legislature creates a specific, mandatory punishment scheme with little or no room for discretion, trial judges have no authority to order a prayer for judgment continued in lieu of the prescribed sentence.¹³⁵

131. *Greene*, 297 N.C. at 308, 255 S.E.2d at 144.

132. *Id.* at 309, 255 S.E.2d at 145.

133. *Id.* at 308, 255 S.E.2d at 144.

134. *Id.* at 309-310, 255 S.E.2d at 145.

135. *See id.* at 312, 255 S.E.2d at 147 (holding, in an impaired driving case, that trial judges may not continue prayer for judgment on conditions . . . “where the sentence is made mandatory by the General Assembly”).

In essence, the court determined that legislative action can curtail the judicial power to continue prayers for judgment.

Although the holding of *In re Greene* is clear, one complicating factor in the opinion is that the court expressly limited its holding to conditional prayers for judgment continued.¹³⁶ The court excluded the temporary prayer for judgment continued and the unconditional prayer for judgment continued from its analysis, leaving room for an argument that trial courts' authority to order these other types of prayers for judgment continued might not be subject to legislative regulation to the same extent as conditional prayers for judgment continued.¹³⁷ Research reveals no North Carolina appellate decisions that have directly addressed this open question. However, in dicta, the Supreme Court of North Carolina implied that the legislature has full authority to regulate in this area.¹³⁸ Specifically, in the

136. Limiting its holding, the Court specifically stated as follows: We are not here concerned with . . . the plenary inherent power of the courts temporarily to delay, for judicial purposes, pronouncement of judgment . . . so as to afford time to consider post-trial motions, to prevent a miscarriage of justice, and for other like purposes contemplated by law and justice. For these reasons the pronouncement of judgment may be deferred, but only for a reasonable time. We address only the claimed 'inherent' power of the court to continue prayer for judgment *on conditions* or suspend execution of sentence on conditions. *Id.* at 307, 255 S.E.2d at 144 (emphasis added).

137. *See id.*; *State v. Absher*, 335 N.C. 155, 157, 436 S.E.2d 365, 366 (1993) ("In this state, we have made a distinction between cases in which prayer for judgment is continued with conditions imposed and cases in which prayer for judgment is continued without any conditions.")

138. *State v. Graham*, 225 N.C. 217, 219, 34 S.E.2d 146, 147 (1945).

1945 decision, *State v. Graham*, the court explained that “[i]n the absence of a statute to the contrary, sentence does not necessarily have to be imposed at the same term of court at which the verdict or plea of guilty was had, and courts of general jurisdiction . . . have the power to continue the case to a subsequent term for sentence.”¹³⁹

This dicta suggests that, if the General Assembly enacts a statute requiring judgment to be entered within a certain period of time after a guilty verdict or guilty plea, then trial courts will have to follow that directive.¹⁴⁰

The North Carolina Constitution lends additional support to the proposition that the General Assembly has authority to regulate temporary and unconditional prayers for judgment continued. The constitution gives the General Assembly broad authority to create rules of procedure and practice for the trial courts.¹⁴¹ Given that the prayer for judgment continued is a procedural device which defers the imposition of a sentence in a criminal or motor vehicle case, the

139. *Id.*

140. An example of just such a statutory provision, N.C. Gen. Stat. § 15A-1331B, is discussed in Part IV(c) *infra*, where the legislature restricts the length of time prayers for judgment may be continued in high-level felony cases.

141. N.C. Const. art. IV, § 13(2).

legislature's procedural rule making power under the state constitution suggests that the General Assembly has constitutional authority to regulate procedures related to trial courts' use of temporary and unconditional prayers for judgment continued. Indeed, there are a number of statutes which already regulate the manner in which trial courts conduct sentencing proceedings and render judgments in criminal and motor vehicle cases. The regulation of temporary or unconditional prayers for judgment continued would be consistent with such provisions.¹⁴² Lastly, there does not appear to be any principled reason for the legislature's authority to regulate temporary and unconditional prayers for judgment continued to be any different from its authority to regulate conditional prayers for judgment continued. For these reasons, any attempt to challenge the legislature's authority to regulate or to restrict the courts' use of any type of prayer for judgment continued – temporary, conditional, or unconditional – is likely

142. See, e.g., N.C. Gen. Stat. § 15A-833 (2015) (giving crime victims the right to be heard at the time of sentencing); N.C. Gen. Stat. § 15A-1331(a) (2015) (stating that a "criminal judgment . . . shall be consistent with the provisions of" the Structured Sentencing Law for offenses within the defined scope of that law); N.C. Gen. Stat. § 15A-1340.3 (2015) (defining goals to be achieved by a court's sentencing decision); N.C. Gen. Stat. § 15A-1340.16(d) & (e) (2015) (describing the aggravating and mitigating factors to be considered by a trial judge when choosing a sentence); N.C. Gen. Stat. § 15A-2000 *et seq.* (2015) (mandating special sentencing procedures to apply in capital cases).

to fail under North Carolina's Constitution, laws, and appellate decisions.

B. A LEGISLATIVE TRADITION OF NON-ACTION AND AVOIDANCE

Although the North Carolina legislature has the above-described authority to regulate trial courts' use of prayers for judgment continued, the General Assembly did not directly regulate the courts in such usage until recently. Indeed, while trial judges regularly used temporary, conditional, and unconditional prayers for judgment continued during the nineteenth and twentieth centuries,¹⁴³ the North Carolina General Assembly established a tradition of non-action and avoidance. When there were issues indicating a need for regulation or clarity, the General Assembly took either no action or only indirect actions and consistently avoided any direct regulation of the courts' use of prayers for judgment continued in criminal and motor vehicle cases.¹⁴⁴

143. See *supra* Part III (describing how North Carolina courts have used prayers for judgment continued in criminal and motor vehicle cases).

144. See generally *Pelley v. Colpoys*, 122 F.2d 12, 13 (1941) (describing how "for nearly half a century prior to 1937, the trial judges in North Carolina operated a system of probation on their own initiative" by suspending the execution of sentences or continuing prayers for judgment); *In re Greene*, 297 N.C. 305, 308-310, 255 S.E.2d 142, 145 (1979) (noting the lack of legislative action when courts used procedural devices as alternative sentencing mechanisms until the General Assembly created a system of probation in 1937).

One of the earliest examples of legislative non-action was in the period following the Supreme Court of North Carolina's decision in *State v. Crook* in 1894.¹⁴⁵ Prior to *Crook*, the Supreme Court of North Carolina acknowledged how trial courts used various procedures to avoid imposing the prescribed punishment in cases¹⁴⁶ and expressly disapproved of some of those practices.¹⁴⁷ Nevertheless, such practices continued in various forms at the trial court level.¹⁴⁸ In *Crook*, the court appeared to break away from its previous stance of disapproval and expressed approval of trial judges' use of procedural devices to defer sentencing.¹⁴⁹ These decisions highlighted the need for clarity and direction in court practices designed to help defendants avoid overly onerous punishments,¹⁵⁰ yet the legislature

145. *Crook*, 115 N.C. 760, 20 S.E. 513.

146. *See State v. Bennett*, 20 N.C. 170, 178 (1838) ("We know that a practice has prevailed to some extent of inflicting fines with a provision that they should be diminished or remitted altogether upon matter thereafter to be done, or shown to the Court by the person convicted. But we can find no authority in law for this practice, and feel ourselves bound, upon this first occasion when it is brought judicially to our notice, to declare it illegal.").

147. *See id.* (finding trial courts' use of procedural devices to defer judgments, other than through the suspension of sentences already pronounced, to be "illegal").

148. *See In re Greene*, 297 N.C. at 309, 255 S.E.2d at 145; Coates, *supra* note 12, at 210 (citing *Bennett*, 20 N.C. 170 (describing how courts engaged in the practice of suspending sentences on conditions since 1800 although it was "first condemned").

149. *See In re Greene*, 297 N.C. at 309, 255 S.E.2d at 145 (citing *Crook*, 115 N.C. at 760, 20 S.E. at 513). By 1909, the Court noted how the practice of continuing prayers for judgment is "well established with us by usage." *Hilton*, 151 N.C. at ___, 65 S.E. 1011, 1013-14.

150. *Crook*, 115 N.C. at 760, 20 S.E. at 514; Coates, *supra* note 12, at 310.

took no action for decades.¹⁵¹ When the General Assembly did finally take action in 1937, it created a statewide system of probation,¹⁵² but did not attempt to develop procedures to guide the courts in their use of devices like the prayer for judgment continued.

Another example of legislative avoidance concerning prayers for judgment continued occurred in the period from 1970 to 1977. In that period, the legislatively-sanctioned Criminal Code Commission undertook a comprehensive review and analysis of North Carolina's criminal procedure laws. The commission studied almost every aspect of the procedures used in criminal cases at the trial level and developed the overarching Criminal Procedure Act, an act adopted by the legislature that still governs, in amended form, all criminal court proceedings today.¹⁵³ Rather than use this as an opportunity to create clear guidelines for courts' use of prayers for judgment continued, the commission and the legislature simply avoided any direct action

151. See *In re Greene*, 297 N.C. at 310, 255 S.E.2d at 145 (concluding "the General Assembly tacitly approved, by inaction" of the prevailing court practices).

152. See Act of Mar. 13, 1937, ch. 132, § 1, 1937 N.C. Sess. Laws 351 (providing that "the judge of any court of record with criminal jurisdiction may suspend the imposition or the execution of a sentence and place the defendant on probation").

153. See N.C. Gen. Stat. ch. 15A (2015).

on the issue.¹⁵⁴ For example, in a provision containing definitions for various terms of art used in the legislation, the phrase “prayer for judgment continued” appears once, but not in a provision defining or explaining its use.¹⁵⁵ Instead, the provision defined “entry of judgment,” and provided that a prayer for judgment continued upon payment of costs would not be considered a final judgment.¹⁵⁶ Once again, despite having authority to do so, the General Assembly avoided any attempt to regulate the use of prayers for judgment continued in the trial courts.

As a final example of this pattern of legislative avoidance, members of the General Assembly introduced a 1993 bill entitled “An Act Relating to Prayers for Judgment in Infraction Cases where the National Safety Council Defensive Driving Course, or a Similar Approved Course, has been Completed by the Person Cited.”¹⁵⁷ In the original version of this bill, the bill’s sponsors enumerated specific requirements to be met before a court would grant a prayer for

154. *See generally Id.*

155. N.C. Gen. Stat. § 15A-101(4a) (2015).

156. *Id.*

157. N.C. Gen. Assemb. H.B. 1015, 1993 Leg., 1993 Sess. (1st ed.) (N.C. 1993).

judgment continued to a person charged with committing an infraction.¹⁵⁸ By requiring that the charged individual complete an approved defensive driving course, pay court costs, and have not received a prayer for judgment continued in the preceding five years,¹⁵⁹ an apparent goal of this bill was to encourage drivers to take a safe driving course and thereby improve “driving habits and . . . traffic safety.”¹⁶⁰ However, as trial judges were already continuing prayers for judgment in cases they deemed appropriate, an indirect result of this bill was that courts would be restricted from continuing the prayer for judgment for an infraction when the person charged did not meet the proposed statutory requirements.

It is not clear the extent to which this specific issue was debated amongst legislators in 1993, but proposed revisions to the bill suggest that, in line with the tradition of avoidance, legislators at that time were not willing to place such stringent restrictions on the trial courts. For example, in the second version of the bill, the application

158. See N.C. Gen. Assemb., H.B. 1015, 1993 Leg., 1993 Sess., at 2, lines 27-35 (1st ed.) (N.C. 1993) (proposing changes to N.C. Gen. Stat. § 15a-1114).

159. See *Id.*

160. See *Proposal for Creation of Statewide Availability of Defensive Driving Course as an Alternative Disposition for Traffic Infractions: Hearing on H.B. 1015 Before the H. Judiciary II Comm.*, 1993 Leg., 1993 Sess., at 2 (N.C. 1993) (statement describing “highway safety” as a program benefit).

of the proposed statute was limited to a sub-set of infractions, instead of all infractions, and the restriction against entering a prayer for judgment continued for those who had received one in the preceding five years was removed.¹⁶¹ In the third version of the bill, specific language was added to further limit the scope of its application, and to ensure that the legislation did not restrict trial courts' authority too much.¹⁶² Specific language was added to state that it "shall not be construed to be the exclusive procedure for the issuance of a prayer for judgment continued."¹⁶³ In the fourth and final version considered by the General Assembly, the bill was rewritten simply to suggest a few factors that a judge may consider before deciding whether to continue the prayer for judgment in the infraction cases covered by the provision.¹⁶⁴ In the end, the work of three different legislative standing committees and several proposed revisions did not result in the bill becoming law.¹⁶⁵ Once again, the General Assembly stayed

161. See N.C. Gen. Assemb., H.B. 1015, 1993 Leg., 1993 Sess., at 2, lines 14-21 (2d ed.) (N.C. 1993) (limiting scope of bill to those infractions where a mandatory court appearance was not required by N.C. Gen. Stat. § 7A-148).

162. See N.C. Gen. Assemb., H.B. 1015, at 2, lines 15 & 26-27 (3d ed.) (N.C. 1993) (now limiting the bill's scope to moving traffic violations for which a court appearance was not mandatory under N.C. Gen. Stat. § 7A-148).

163. *Id.*

164. See N.C. Gen. Assemb., H.B. 1015, 1993 Leg., 1993 Sess., at 2, lines 16-30 (4th ed.) (N.C. 1993).

165. See *H.B. 1015 Vote History*, available at <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=1993&BillID=H1015&submitButton=Go>.

with its tradition of avoidance when it came to regulating the trial courts' use of prayers for judgment continued.

One might point out that variations of the phrase “prayer for judgment continued” appear a number of times in North Carolina’s criminal and motor vehicle laws in an attempt to dismiss the examples discussed herein as anomalies not indicative of the legislature’s overarching approach to courts’ use of prayers for judgment continued in cases.¹⁶⁶ However, a close examination of the contexts in which the phrase appears reveals that the General Assembly has, indeed, avoided direct regulation of the courts in this area. For example, the legislature took an indirect approach to prayers for judgment continued when it addressed the problem of recidivism in motor vehicle cases.¹⁶⁷ Rather than directly regulating when trial courts could or could not use prayers for judgment continued in cases involving motorists who have a history of violations, the General Assembly

166. *See, e.g.*, N.C. Gen. Stat. §§ 14-415.12 (2015) (where a prayer for judgment continued on certain offenses will result in the denial of a concealed handgun permit); N.C. Gen. Stat. § 15A-534 (2015) (where one’s obligations under a bail bond terminate upon entry of an indeterminate prayer for judgment continued in district court); N.C. Gen. Stat. § 15A-1381 (2015) (defining “disposition” to include a prayer for judgment continued); N.C. Gen. Stat. § 20-4.01(4a) (2015) (where some prayers for judgment continued are included in the definition of “conviction”).

167. *See* N.C. Gen. Stat. § 20-4.01(4a) (a)(4).

chose to regulate the impact that the prayer for judgment continued would have on a motorist's driving record.¹⁶⁸ It enacted a provision which defined "conviction" to include one's third or subsequent prayer for judgment continued in a five-year period,¹⁶⁹ but did not prevent trial judges from granting one to a motorist who had such a record.¹⁷⁰ Here, the legislature maintained its tradition of avoidance and opted for an indirect solution instead.

C. THE 21ST CENTURY: A NEW RESTRICTIVE LEGISLATIVE APPROACH

In stark contrast to the tradition of legislative non-action and avoidance in the late nineteenth and the twentieth centuries, the General Assembly has gone in a new direction for the twenty-first century.¹⁷¹ No longer allowing trial and appellate courts to manage freely how and when a prayer for judgment continued may be used in a criminal or motor vehicle case, the General Assembly has started to carve away at the courts' authority and has placed restrictions on the

168. *See id.*

169. *See id.*

170. *Id.*

171. *See e.g.*, N.C. Gen. Stat. § 20-217(e) (2015) (providing that a violator "shall not receive a prayer for judgment continued under any circumstances").

use of prayers for judgment continued.¹⁷² Specifically, on four occasions since the turn of the century, the legislature has expressly prohibited courts from granting prayers for judgment continued to dispose of certain types of cases.

The first time the North Carolina General Assembly broke away from its tradition of avoidance was in 2006.¹⁷³ Legislators enacted a bill which included an explicit restriction on a trial court's authority to continue prayer for judgment for defendants adjudged to be guilty of passing a stopped school bus.¹⁷⁴ The formal title of the act, "An Act to Prevent a Person who is Guilty of Passing a Stopped School Bus from Receiving a Prayer for Judgment Continued," demonstrated that the sole purpose of the legislation was to limit the courts' power to continue the prayer for judgment in such cases.¹⁷⁵ Although the General Assembly took the rare step of directly re-

172. *See e.g., id.*

173. *See* N.C. Gen. Stat. § 20-217(e) (2015) (providing that a violator "shall not receive a prayer for judgment continued under any circumstances")

174. *See id.*

175. No Prayer for Judgment/Bus Stop Arm Violation Act, ch. 20, 2006 N.C. Sess. Laws 2006-160 (2006) (preventing a person guilty of passing a stopped school bus from receiving a prayer for judgement).

straining judges' decision-making powers in these cases, this legislation was passed without controversy.¹⁷⁶ One explanation for the lack of controversy may be that the bill was strictly tailored to a situation about which legislators and the public were concerned. Statistics considered by members of the General Assembly included an estimate that there were 440,000 violations of the school bus passing law each year.¹⁷⁷ Although 44.8% of those actually charged with the offense were adjudged to be guilty, 63% of the guilty were granted prayers for judgment continued by the trial courts.¹⁷⁸ Faced with these statistics, and with the fact that the legislation was supported by various law enforcement and crime control agencies,¹⁷⁹ the General Assembly passed this legislation and made it effective on September 1, 2006.¹⁸⁰

176. See *H.B. 2880 Vote History*, (2005-2006 Session) (showing unanimous votes to in both chambers), available at <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=H2880>.

177. See Editorial, *Full Stop*, WINSTON-SALEM JOURNAL, July 10, 2006 (attached to July 11, 2006 Minutes of Senate Judiciary II Committee) (the committee which approved the bill's consideration by the full Senate body).

178. See Bryce Ball and Jim Mills, Legislative Incarceration Fiscal Note for H.B. 2880, N.C. Gen. Assemb., 2005 Sess., at 2 (N.C. 2006).

179. See Rep. Dale Folwell, *Supporters of HB*, attached to Minutes of Senate Judiciary II Comm., July 11, 2006 & Minutes of H. Comm. on Judiciary IV, Jun. 27, 2006 (listing the NC Department of Crime Control and Public Safety, the NC Highway Patrol, and the NC Sheriffs' Association among supporters).

180. See No Prayer for Judgment/Bus Stop Arm Violation Act, ch. 20, 2006 N.C. Sess. L. 2006-160 § 2 (2006).

Just one year after the legislature's first break with the longstanding tradition of avoidance, the General Assembly adopted another direct restriction on the judiciary's authority to continue prayers for judgment.¹⁸¹ Specifically, in 2007, the General Assembly enacted a provision to provide that drivers "charged with speeding in excess of 25 miles per hour over the posted speed limit shall be ineligible for a disposition of prayer for judgment continued."¹⁸² Although this language does not restrict a court from ordering a temporary prayer for judgment continued,¹⁸³ it very clearly prohibits trial judges from ordering long-term conditional or unconditional prayers for judgment continued that might become the permanent disposition of a case.¹⁸⁴ Around the time of this legislation, public media accounts portrayed prayers for judgment continued in speeding cases as "legal loopholes" that allowed defendants to obtain undeserved "deals" and to be let "off easy."¹⁸⁵ This legislation was depicted as the General Assembly's attempt to close loopholes in the assessment of

181. N.C. Gen. Stat. § 20-141(p) (2015).

182. *Id.*

183. *See supra* Part II (describing temporary prayers for judgment continued as short-term continuances of sentencing proceedings).

184. N.C. Gen. Stat. § 20-141(p) (2015).

185. Pat Stith et al., *Cops write tickets, speeders get deals*, NEWS & OBSERVER, May 15, 2007 at A1.

penalties for speeding motorists.¹⁸⁶ Unlike the passage of the previous year's bill regarding school bus passing violations, this speeding legislation generated more controversy, with a version being voted down in each chamber of the General Assembly within a day of its final passage.¹⁸⁷ One member of the General Assembly specifically identified legislative micromanagement of the court system as a source of concern.¹⁸⁸ Despite this concern, and despite the legislature's previous tradition of avoidance, the bill was passed in a late night compromise vote.¹⁸⁹

Having twice been successful at curtailing judicial authority to continue prayers for judgment in specific types of motor vehicle cases, the legislature later moved to restrict the courts' power in criminal cases.¹⁹⁰ In its 2011-2012 session, the General Assembly considered and eventually passed legislation with a title clearly stating that its purpose was to "limit prayers for judgment continued."¹⁹¹

186. Pat Stith, *Speeding Bill Fails in House Vote*, NEWS & OBSERVER, Aug. 2, 2007, at A1; Pat Stith et al., *State Leaders Vow to Close Speed Loopholes*, NEWS & OBSERVER, May 22, 2007 at A1.

187. See *Speeding Law Changes Vote History*, S.B. 925, 2007 Gen. Assemb., (N.C. 2007), (available at <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=S925&votesToView=all>).

188. See Stith, *supra* note 186 (describing Representative Tim K. Moore's opposition to the bill).

189. See *supra* note 187.

190. See *School Violence Prevention Act*, 2012 N.C. Sess. L. 149.

191. *Id.*

This legislation imposed restrictions on trial courts' ability to enter prayers for judgment continued in cases involving upper-level felony offenses.¹⁹² The provision now includes at least 148 defined crimes within its scope.¹⁹³ The provision takes away trial judges' power to continue the prayer for judgment for indeterminate periods of time.¹⁹⁴ Now, for judges who decide that a prayer for judgment continued is appropriate, they must not allow the period of deferred judgment to exceed twenty-four months.¹⁹⁵

Despite the broad number of criminal offenses to which this legislation applied, there was very little debate about it in the North Carolina House of Representatives where the bill originated.¹⁹⁶ The sponsor of the bill and three other representatives spoke in support of

192. *See id.*

193. *See* N.C. Sentencing & Policy Advisory Comm'n, Felony Classification under the Structured Sentencing Act, at 1-7 (current through Dec. 1, 2016) <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/Felony-list-2016.pdf> (last visited Aug. 27, 2017 6:58 am).

194. *See* N.C. Gen. Stat. § 15A-1331.2 (2015).

195. To reach the maximum twenty-four month period allowed under this legislation, a trial judge must review the case at least twelve months after the original order was entered and must specifically find that an additional twelve months "is in the interest of justice." *Id.*

196. *See* H.R. 852, 2011 Gen. Assemb., 2011 Reg. Sess. (N.C. 2011) (originally proposed bill).

it, describing it as a measure to clarify the scope of prayers for judgment continued and as an attempt to be “tougher on crime.”¹⁹⁷ When this provision was discussed on the House floor, no one voiced any opposition at any time.¹⁹⁸

Most recently, just one year after enacting the prayer for judgment continued restrictions for upper-level felony cases, the legislature enacted another provision that carved away at the judiciary’s authority to use the prayer for judgment continued in criminal cases.¹⁹⁹ This time, in 2013, the General Assembly did not set out to target the courts’ authority but, instead, enacted comprehensive legislation to address the issue of human trafficking in North Carolina.²⁰⁰ The legislation was subjected to several revisions, including a section which repealed and replaced statutes related to the crime of prostitution.²⁰¹

197. House Audio Archives (Apr. 28, 2011), <http://www.ncleg.net/DocumentSites/HouseDocuments/2011-2012%20Session/Audio%20Archives/2011/04-28-2011.mp3> (last visited Sept. 19, 2017) (remarks by Rep. Guice, Rep. Spear, Rep. Engle, & Rep. Faircloth at 239:00 - 244:36).

198. *See id.*; House Audio Archives (June 18, 2012), <http://www.ncleg.net/DocumentSites/HouseDocuments/2011-2012%20Session/Audio%20Archives/2012/06-18-2012.mp3> (last visited Sept. 19, 2017) (describing Senate Bill 707 prior to an affirmative vote in the House on its second reading; remarks by Rep. Glazier at 66:25 - 74:32); House Audio Archives (July 12, 2012), <http://www.ncleg.net/DocumentSites/HouseDocuments/2011-2012%20Session/Audio%20Archives/2012/07-02-2012.mp3> (last visited Sept. 19, 2017) (remarks on conference report for Senate Bill 707 prior to affirmative vote in House; remarks by Rep. Glazier at 136:00 to 138:06).

199. *See* 2013 N.C. Sess. L. 368 at 1 (N.C. 2013) (entitled in part as “[a]n Act to Create a Safe Harbor for Victims of Human Trafficking”).

200. *See id.*

201. *Compare id.* at §§ 4-5 with S.B. 683, § 5, 2013 N.C. Gen. Assemb. (N.C. 2013) (ver. 1, Apr. 4, 2013).

Nearing the end of the legislative process, legislators added a provision to this section to state that one who commits the crime of solicitation of prostitution “*shall not* be eligible for a disposition of prayer for judgment continued *under any circumstances.*”²⁰² Once added to the bill, this strongly worded restraint on courts’ authority remained unchanged and went into effect on October 1, 2013.²⁰³

Any one of these legislative restrictions, when taken in isolation, appears to be an appropriate use of the legislative power to regulate courts’ use of prayers for judgment continued in criminal and motor vehicle cases.²⁰⁴ However, this new legislative trend should raise concerns when these restrictions are viewed together and in comparison with an extremely long tradition of legislative avoidance. Will the legislature continue on this path, curtailing the trial court system’s use of prayers for judgment continued every few years until the restrictions become a straightjacket on trial judges’ decision-making

202. See S.B. 683, § 5, 2013 Gen. Assemb. (N.C. 2013) (ver. 4 at lines 12-13, Jun. 27, 2013) (emphasis added).

203. See 2013 N.C. Sess. L. 368, at §§ 5 & 25 (N.C. 2013).

204. See, e.g., N.C. Gen. Stat. § 20-217(e) (2015).

processes in individual cases? Or, can the courts take action to prevent that from happening?

**V. HOW TO AVOID A LEGISLATIVE STRAIGHTJACKET?:
MODEST PROPOSALS FOR TRIAL COURT ACTION**

Considering the ease with which the legislature has exercised its authority to restrict the trial courts' use of prayers for judgment continued, and considering the frequency with which it has done so in comparison to its previous tradition of avoidance, the time has come for North Carolina's trial courts to take action. The legislature may have the constitutional authority to regulate in this area, but the court system can certainly encourage the General Assembly to return to a more restrained approach. Given the history and purposes behind the courts' use of prayers for judgment continued in criminal and motor vehicle cases, court actors should not stand by and do nothing. Instead, courts should seriously consider implementing the following steps:

- (1) Acknowledge and publicly discuss the new, restrictive legislative trend;

- (2) Communicate to legislators and others the important role prayers for judgment continued have in the administration of justice;
- (3) Maintain high standards when using prayers for judgment continued to avoid possible abuses; and
- (4) Be more transparent about the parameters and justifications for a prayer for judgment continued in an individual case.

One of the striking features of the current legislative trend for prayers for judgment continued is the relative lack of controversy surrounding the enactment of each restrictive provision.²⁰⁵ It is not clear why this issue was not strongly debated in the General Assembly each time it arose.²⁰⁶ It is also not clear why there was no public outcry or debate by the lawyers, judges, and court personnel who

205. *See supra* Part IV(C).

206. It is worth exploring elsewhere whether the explanation for current legislative trends may simply be that today's General Assembly has fewer lawyers in its ranks. *See* Leo Daughtry, *Lawyers in the Legislature*, N.C. State Bar J. at 19 (Summ. 2017) (describing the "marked decrease" of lawyers in today's legislature compared to forth years ago). The lack of lawyer-legislators would certainly have an impact on any matters affecting the court system because "lawyers in the general assembly [can] explain that our courts must be able to redress the wrongful acts and the individuals who commit them. The high profile cases generally have facts that support their results—facts that are not explained or understood. Lawyers help educate other members of the general assembly." *Id.*

were familiar with prayers for judgment continued and their use in the trial court system.²⁰⁷ Quite possibly, the longstanding legislative tradition of avoidance plus the topic-focused nature of each restriction lulled the most informed individuals into complacency. If court actors acknowledge what has happened thus far in the twenty-first century, study how the new restrictions impact the court system, and start conversations about this issue publicly, then the complacency may end. At that point, having followed the first step proposed here, individuals can work on developing better solutions to the problems which led legislators to enact these restrictions in the first place.

As a second step in addressing the recent curtailment of courts' power to grant prayers for judgment continued, individuals who work every day within the trial court system need to educate legislators, the media, and members of the public about the contributions the prayer for judgment continued makes in the administration of justice. They need to explain to those who do not work within the court system

207. Comments from court actors and other members of the public were noticeably missing from news coverage about the then-proposed bill. *See, e.g.*, Pat Stith et al., *Speeding Bill Fails in House Vote*, NEWS & OBSERVER (Aug. 2, 2007) at A1; Editorial, *A Ticket System Fix*, NEWS & OBSERVER (July 31, 2007); Pat Stith et al., *State Leaders Vow to Close Speed Loopholes*, NEWS & OBSERVER (May 22, 2007).

how judges need to be able to address anomalous cases because the legislative process cannot anticipate or account for the various ways an individual defendant's situation or conduct might deviate from the norm. They should describe to others how, when overseeing approximately 2.3 million criminal and motor vehicle cases in a year,²⁰⁸ trial courts need devices like the prayer for judgment continued to encourage cooperative case resolutions and avoid the need for lengthy, resource-draining methods to dispose of such cases. In addition, they can point out that any alleged overuse of prayers for judgment continued in some cases might be the courts' way of innovating to handle systemic problems that need legislative attention beyond simply curtailing judicial authority. For example, the alleged overuse of prayers for judgment continued in speeding cases in the past²⁰⁹ could have been a signal that legislators needed to address the systemic problem of overcrowded dockets.²¹⁰ If trial court actors take the step

208. See N.C. Admin. Office of the Cts., ANNUAL REPORT OF THE NORTH CAROLINA JUDICIAL BRANCH at 12-13 (2015-2016), available at http://www.nccourts.org/Citizens/Publications/Documents/2015-16_North_Carolina_Judicial_Branch_Annual_Report.pdf (reporting how superior trial courts disposed of 143,465 criminal and 8,280 traffic cases in 2015-2016 while district trial courts disposed of 584,631 criminal, 967,985 traffic, and 614,357 infraction cases).

209. See Pat Stith *et al.*, *Cops write tickets, speeders get deals*, NEWS & OBSERVER, May 15, 2007, at A1.

210. Cf. Paul Tharp, *Investigation into Mecklenburg PJC arrangement begins* N.C. LAWYERS WEEKLY, Aug. 27, 2010 (describing as beneficial a program using prayers for judgment continued in traffic cases in a county with "a large caseload" because of its ability to "promote[] efficient use of valuable time and resources").

of communicating to others about the utility of the prayer for judgment continued, legislators might undertake the difficult policy work required to address such problems directly.

Turning to the third recommendation above, trial judges and court actors need to be attentive to the standards they use when prayers for judgment continued are involved. As the North Carolina Supreme Court cautioned long ago, “the practice should not be readily or hastily enlarged and extended to occasions which might result in unusual punishment or unusual methods of administering the criminal law.”²¹¹ After all, by continuing the prayer for judgment, a trial judge may frustrate public expectations and legislative prescriptions that a defendant be punished once guilt is established. The public and the legislature need to know that a trial judge in a case did not continue the prayer for judgment based on improper factors, such as favoritism instead of fairness, or prejudice instead of justice.²¹² In

211. Hilton, 151 N.C. at ___, 65 S.E. 1011, 1014.

212. See Thomas McDonald, *Sheriff's daughter gets a rare deal*, NEWS & OBSERVER, Jan. 13, 2011, at 1B (where prosecutor described outcome in Harrison's case as “in the best interest of justice” despite appearances that it was “biased” because Harrison is a sheriff's daughter).

addition, because the public may scrutinize closely a judge's deliberate decision not to pronounce a sentence and final judgment on a defendant, courts must ensure that the procedures used in connection with the prayer for judgment continued are unassailable.²¹³ Demonstrated compliance with procedures and rules related to prayers for judgment continued may assuage some of the concerns that led the legislature to curtail judicial authority as it has recently done.

Closely related to the maintenance of high standards is the fourth recommendation for court action—that trial judges be much more transparent about their decisions to continue the prayer for judgment in cases. Transparency means more than acting with high standards. It means documenting one's compliance with those standards and allowing the public access to said documentation. Currently, the only criminal trial court proceedings recorded by court reporters and available to be transcribed are those occurring in superior court.²¹⁴ Criminal proceedings in district court are generally not recorded,²¹⁵ but

213. *Cf.* Tharp, *supra* note 210 (describing questions raised about the legality of local procedures used to enter prayers for judgment continued in motor vehicle cases after the defendants attended driving school).

214. N.C. Gen. Stat. § 15A-1241 (2015).

215. *See* State v. Gurganus, 71 N.C. App. 95, 99, 321 S.E.2d 923, 925 (1984) (“District Criminal Courts are not courts of record.”)

judges in either court should make an effort to record a few brief details about any decision to continue the prayer for judgment in a case. The most important details to record might include: (1) the type of prayer for judgment continued intended by the judge (temporary, conditional, or unconditional); (2) whether there is a possibility for the prayer for judgment continued to become the permanent disposition of the case (such as upon the defendant's compliance with the announced conditions); and (3) the reasons for the decision. To avoid an undue burden on court personnel, this documentation could be in the form of a template "order continuing prayer for judgment" to allow the judge's decision to be recorded by doing no more than checking off a few boxes on the template or adding a few lines of text. Such transparency through documentation will help outsiders see that such decisions have legitimate bases and clear parameters.

Although taking the actions proposed here will not guarantee to the court system that legislators will reverse their current restrictive course or show restraint in the future, such acts will not make the situation any worse. The legislature has already enacted provisions to restrict the courts in their use of prayers for judgment continued

and trial judges need to do something to preserve what is left of their authority to use the device.

VI. CONCLUSION

North Carolina courts have exercised the authority to continue the prayer for judgment in criminal and motor vehicle cases for more than one hundred years. The longevity of this device is a testament to its usefulness in the administration of justice. Although the legislature has constitutional authority to regulate or restrict courts' use of this device, the recent enactment of provisions curtailing courts' authority in this area is a significant break from a longstanding legislative tradition of avoidance. In view of this new legislative trend, the North Carolina court system must take action to ensure the beneficial role of prayers for judgment continued can continue for at least another 100 years.