



Police Law Bulletin



City Attorney's Office

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2008 Legislation Affecting Criminal Law and Procedure



Below are brief summaries of selected legislation affecting criminal law and procedure that were enacted during the 2008 legislative session. For details about the bills summarized below, please review the actual legislation. Copies are available on the General Assembly's website: go to www.ncleg.net; insert the bill number, for example s912 or h2098 in the Find Bills by Number box located on the right-hand side of the screen; click Go; then click on the title of the bill located at the top of the screen.

Repeat Violators of Domestic Violence Orders

House Bill 44 (Session Law 2008-93)

Amends G.S. 50B-4.1(f) to provide that it is a Class H felony for a person to violate a valid protective order after having been previously convicted of two, rather than three, offenses under Chapter 50B.

Effective: December 1, 2008, but offenses committed before that date count in determining the total number of prior offenses

ATV for Beach Driving

House Bill 133 (Session Law 2008-91)

Amends G.S. 20-171.22 to allow a person 16 or older to operate an ATV on the beach without wearing eye protection and a safety helmet as required by G.S. 20-171.19(a).

Effective: July 11, 2008

Child Passenger Safety Technician Liability

House Bill 178 (Session Law 2008-178)

Creates new G.S. 20-137.5 to protect a “certified child passenger safety technician” or a “sponsoring organization” from civil liability for the inspection, installation, or adjustment of a child safety seat or in providing education regarding the installation or adjustment of a child safety seat if : 1) the service is provided without a fee or charge other than reimbursement for expenses; and 2) the child passenger safety technician or sponsoring organization acts in good faith and within the scope of training for which the technician is currently certified. The certified child passenger safety technician or sponsoring organization is not protected from civil liability for willful or wanton misconduct or gross negligence or if the inspection, installation or adjustment of the child safety seat or the education is in conjunction with the for-profit sale of a child safety seat.

Effective: October 1, 2008

Street Gang Suppression Act

House Bill 274 (Session Law 2008-214)

Amends G.S. 14-2.3 to make property obtained through criminal street gang activity subject to forfeiture.

Adds new G.S. 14-34.9 to make discharging a firearm, as part of a pattern of criminal street gang activity, from within a building, structure or motor vehicle, towards a person, a Class E felony.

Creates Article 13A, the North Carolina Street Gang Suppression Act, which includes the following provisions:

G.S. 14-50.16 makes it unlawful for any person associated with a criminal street gang to: conduct or participate in a pattern of criminal street gang activity; or acquire or maintain any interest or control over any real or personal property through a pattern of criminal street gang activity. Violation is a Class H felony unless the person conducting or participating in the activity is an organizer, supervisor or acts in a position of management with regard to the gang, in which case violation is a Class F felony. “Criminal street gang” is defined as an ongoing organization, association or group of three or more persons that: has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult; has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and may have a common name, identifying sign or symbol. “Criminal street gang activity” means to commit, attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such acts were intended for the purpose of the person’s involvement in a criminal street gang. An act or acts are included if chargeable by indictment under the North Carolina Controlled Substance s Act or any offense under Chapter 14 with some specified exceptions. “Pattern of criminal street gang activity” means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes, results, accomplices, victims

or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of the offenses occurred after December 1, 2008, and the last of the offenses occurred within three years of prior criminal street gang activity.

Creates G.S. 14-50.17 making it a Class H felony for any person to cause, encourage, solicit or coerce a person 16 or older to participate in criminal street gang activity.

Creates G.S. 14-50.18 making it a Class F felony for any person to cause, encourage, solicit or coerce a person under 16 to participate in criminal street gang activity.

Creates G.S. 14-50.19 making it a Class H felony to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter that person from assisting another to withdraw from membership in a gang.

Creates G.S. 14-50.20 making it a Class H felony to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a gang.

Creates G.S. 14-50.22 enhancing the punishment one class for any person 15 or older who is convicted of a misdemeanor offense committed for the benefit of, at the direction of, or in association with, any criminal street gang.

Amends G.S. 15A-1340.16A to provide for an enhanced punishment for not only possession of a firearm but for the possession of any deadly weapon.

Effective: December 1, 2008

Amend Criminal Offense of Stalking

House Bill 887 (Session Law 2008-167)

Repeals the existing stalking law, G.S. 14-277.3, and replaces it with G.S. 14-277.3A. Under the new statute, a defendant is guilty of stalking if he or she: 1) on more than one occasion harasses another person without legal purpose; or 2) willfully engages in a course of conduct without legal purpose and the defendant knows or should know that a) a person would fear for his or her own safety or the safety of his or her family or close friends; or b) would suffer substantial emotional distress. A first offense is a Class A1 misdemeanor. If given community punishment, the defendant must be placed on supervised probation. A second offense is punished as a Class F felony. If there is a court order in place prohibiting the conduct of the defendant at the time of the offense, the punishment is a Class H felony. The bill authorizes a defendant to be prosecuted in North Carolina for stalking if any part of the offense occurred in North Carolina, including the defendant's course of conduct or the effect on the victim.

Effective: December 1, 2008

**Offenses Against Children;
Sex Offender Registration and Other Requirements**

House Bill 933 (Session Law 2008-117)

Adds new G.S. 14-27.2A, "Rape of a child; adult offender," to prohibit vaginal intercourse by a person who is at least 18 years old with a child under 13 years old. The offense is a Class B1 felony, except the defendant must receive an active punishment of at least 300 months and, following active punishment, mandatory satellite monitoring for life. In addition, the court may sentence the defendant to an active term greater than that allowed under the Structured Sentencing Act, up to and including life imprisonment without parole, if the court finds the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree or scope beyond that normally committed in such crimes. Provides that G.S. 14-27.2(a)(1), "First-degree statutory rape," is a lesser included offense.

Adds new G.S. 14-27.4A, "Sexual offense with a child; adult offender," to prohibit engaging in a sexual act by a person who is at least 18 years of age with a child under 13 years old. The offense is a Class B1 felony, except the defendant must receive an active punishment of at least 300 months and, following active punishment, mandatory satellite monitoring for life. In addition, the court may sentence the defendant to an active term greater than that allowed under the Structured Sentencing Act, up to and including life imprisonment without parole, if the court finds the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree or scope beyond that normally committed in such crimes. Provides that G.S. 14-27.4(a)(1), "First degree statutory sexual offense," is a lesser included offense.

Increases the punishment for the following offenses:

- G.S. 14-190.16, "First degree sexual exploitation of a minor," from a Class D to a Class C felony;
- G.S. 14-190.17, "Second degree sexual exploitation of minor," from a Class F to a Class E felony;
- G.S. 14-190.17A "Third degree sexual exploitation of a minor," from a Class I to a Class H felony; and
- G.S. 14-190.18, "Promoting prostitution of a minor," from a Class D to a Class C felony.

Amends G.S. 14-208.6A to require sex offender registration for a minimum of 30 years instead of 10.

Amends G.S. 14-208.7, "Registration," to reduce the time allowed for a convicted sex offender to register with the sheriff from 10 days to three business days.

Amends G.S. 14-208.9, "Change of address; change of academic status or educational employment status," G.S. 14-208.9A, "Verification of registration information," G.S. 14-208.27, "Change of address," and G.S. 14-208.28, "Verification of registration information," to reduce the time period allowed for notification to the Sheriff from 10 days to three business days.

Adds new G.S. 14-208.18 to make it a Class H felony for a person required to register as a sex offender to knowingly be at any of the following locations:

- on the premises of a place intended primarily for the use, care or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds;
- within 300 feet of any location intended for the use, care or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described above that are located in malls, shopping centers, or other property open to the general public; and
- at any place where minors gather for regularly scheduled educational, recreational, or social programs.

Provides for limited exceptions.

Amend G.S. 15A-1345(b), "Bail following arrest for probation violation," to provide that if the probationer has been convicted of an offense at any time that requires registration as a sex offender under Article 27A of Chapter 14 or an offense that would have required registration but for the effective date of the law establishing the sex offender registration program, the court must make a finding that the probationer is not a danger to the public before release with or without bail.

Effective: December 1, 2008

Vandalism That Results In More Than Five Thousand Dollars in Damages Made Class I Felony

House Bill 946 (Session Law 2008-15)

Amends G.S. 14-144, "Injuring houses, churches, fences and walls," to provide that if the damage exceeds \$5,000 the offense is punishable as a Class I felony. If the damage is \$5,000 or less, the crime is punishable as a Class 2 misdemeanor.

Effective: December 1, 2008

Probation Violation Changes

House Bill 1003 (Session Law 2008-129)

Creates G.S. 15A-1340.16(d)(12a) adding as a new aggravating factor for felony sentencing that the defendant has, during the ten years prior to the offense, been found by a state court or the Post-Release Supervision and Parole Commission to be in willful violation of the conditions of probation or parole or post-release supervision. This legislation also allows a period of probation to be modified or extended after the period of probation has expired, if certain conditions are met, including a requirement that a probation violation report be filed with the Clerk of Court before the period of probation expires.

Effective: December 1, 2008

Provision of Information and Assistance to Domestic Violence Victims

House Bill 2189 (Session Law 2008-4)

Amends G.S. 15A-831(a), adding to the list of information that an investigating law enforcement agency must provide to a domestic violence victim within 72 hours, the informational sheet described in G.S. 50B-3(c1) if the victim had a personal relationship, as defined in G.S. 50B-1(b), with the accused.

Effective: July 1, 2008

Conforming CDL Laws to Federal Laws

House Bill 2308 (Session Law 2008-175)

Amends G.S. 20-17.4 so that certain offenses which disqualify a person from operating a commercial motor vehicle apply not only if the offense occurred while the person was operating a commercial motor vehicle, but also if the offense occurred while the person was operating a non-commercial vehicle, but held a CDL.

The statute is further amended so that the holder of a CDL who receives a positive drug or alcohol test, or who refuses to participate in a drug or alcohol test, is disqualified from operating a commercial motor vehicle for a minimum of 30 days and until he or she provides proof of successful completion of a substance abuse assessment and treatment.

Effective: December 1, 2008

Hospital Report Child Injuries

House Bill 2338 (Session Law 2008-179)

Amends G.S. 90-21.20 to require a hospital or doctor to report to the police cases involving recurrent illness or serious physical injury to any child under the age of 18 when the illness or injury appears, in the physician's professional opinion, to be the result of non-accidental trauma.

Effective: December 1, 2008

Transporting Children in Open Bed of Vehicle

House Bill 2340 (Session Law 2008-216)

Amends G.S. 20-135.2B to raise the minimum age, from 12 to 16, for children to ride in the open bed of a pickup truck without being accompanied by an adult. The amendment also deletes the previous exception in this law for counties that have no incorporated area with a population in excess of 3,500, so that now the law applies statewide. A person who violates this section is guilty of an infraction and must pay a penalty of not more than \$25.00 and no court costs regardless of how many underage children were in the pickup truck bed.

Effective: October 1, 2008

Change Format of Drivers Licenses/Under 21

House Bill 2487 (Session Law 2008-217)

Amends G.S. 20-7(n) so that drivers licenses and special identification cards issued after October 1, 2008 to persons under the age of 21 are printed in a vertical format that distinguishes them from the current horizontal format that will now only be issued to persons over the age of 21.

Effective: October 1, 2008

Drought/Water Management Recommendations

House Bill 2499 (Session Law 2008-143)

This is a lengthy bill that addresses drought preparedness and response. It enacts G.S. 143-355.3 providing, among other things, that during a water shortage emergency, the Secretary of the Department of Environment and Natural Resources may adopt emergency water conservation rules. A new G.S. 143-355.6 makes it a Class 1 misdemeanor to violate these emergency rules.

Effective: December 1, 2008

Autism Committee Recommendations

House Bill 2523 (Session Law 2008-83)

Amends G.S. 143B-499.8(b) to remove the age limitation for issuing a Silver Alert for a missing person who is believed to be suffering from dementia or other cognitive impairment. Previously, the Center for Missing Persons could only issue such an alert if the person was age 18 or older.

Effective: July 11, 2008

Protect Children from Sexual Predators Act

Senate Bill 132 (Session Law 2008-218)

Amends the definition of sexual activity in G.S. 14-190.13, as this term applies to G.S. 14-190.16 first degree sexual exploitation of a minor, G.S. 14-190.17 second degree sexual exploitation of a minor, and G.S. 14-190.17A third degree sexual exploitation of a minor, to include the lascivious exhibition of the genitals or pubic area of any person.

Amends G.S. 14-190.16, first degree sexual exploitation of a minor, to increase the punishment from a Class D to a Class C felony.

Amends G.S. 14-190.17, second degree sexual exploitation of a minor, to increase the punishment from a Class F to a Class E felony.

Amends G.S. 14-190.17A, third degree sexual exploitation of a minor, to increase the punishment from a Class I to a Class H felony.

Creates new G.S. 14-202.5 making it a Class I felony for a person required to register as a sex offender to access a commercial social networking website where the sex offender knows that the site permits minor children to become members or to create or maintain personal web pages. Creates new G.S. 14-202.5A providing that a commercial social networking site may be held civilly liable for failing to make reasonable efforts to prevent a sex offender from accessing its website.

Creates G.S. 14-202.6 and amends G.S. 101-6 banning a registered sex offender from obtaining a name change.

Effective: May 1, 2009 (Civil liability for social networking sites)
December 1, 2008 (Remainder of bill)

Interstate Wildlife Violator Compact

Senate Bill 175 (Session Law 2008-120)

Provides for the inclusion of North Carolina in the Interstate Wildlife Violator Compact and sets forth procedures for participating states. Creates new G.S. 113-300.8 making it a Class 1 misdemeanor for a person to hunt, fish, trap, possess or transport wildlife in North Carolina, or to purchase or possess a license to hunt, fish, trap, possess or transport wildlife in North Carolina in violation of a suspension or revocation under the Compact.

Effective: October 1, 2008

Server-Based Electronic Game Promotions

Senate Bill 180 (Session Law 2008-122)

Makes it unlawful to conduct a server-based electronic sweepstakes, which is defined to mean a system in which: 1) a database contains a pool of sweepstakes entries, with each entry associated with a prize value; 2) participants purchase a prepaid card; 3) each prepaid card provides one or more sweepstakes entries; and 4) sweepstakes entries may be revealed either: a) at a point of sale terminal at the time of purchase or later; or b) at a game terminal with a display that simulates a game ordinarily played on a slot machine or video gaming machine. Possessing such a game terminal for the purposes of a server-based electronic sweepstakes or to promote, operate, or conduct a server-based electronic sweepstakes on such a game terminal is illegal and the terminal is subject to seizure. Upon conviction, any ABC permit and any contract to sell lottery tickets is automatically revoked. A first violation of this law is a Class 1 misdemeanor, under G.S. 14-309(a), except that possession of five or more machines is a Class G felony.

Effective: December 1, 2008

Placing of a Burning Cross On Any Public Place, Etc.

Senate Bill 685 (Session Law 2008-197)

Amends G.S. 14-12.12 to make the offense of placing a burning cross applicable to any public place.

Amends G.S. 14-12.13, "Placing exhibit with intention of intimidating, etc., another," and G.S. 14-12.14, "Placing exhibit while wearing mask, hood, or other disguise," to clarify that the term "exhibit" includes items such as a noose.

Amends G.S. 14-12.15 to increase the punishment for a violation of G.S. 14-12.12(b), "Placing burning or flaming cross on property of another or on public street or highway or any public place" with the intention of intimidating another, 14-12.13, "Placing exhibit with intention of intimidating, etc., another", or 14-12.14 "Placing exhibit while wearing mask, hood, or other disguise," from a Class I to a Class H felony.

Amends G.S. 14-39 (c) to increase the punishment for any Class A1 or Class I misdemeanor which is committed because of the victim's race, color, religion, nationality, or country of origin, from a Class I to a Class H felony.

Effective: December 1, 2008

Prohibit Restricting Newspaper Distribution

Senate Bill 942 (Session Law 2008-223)

Prohibits a local government from enacting or enforcing any ordinance that prohibits the distribution of newspapers on the non-traveled portion of any street or highway except when the distribution impedes the normal movement of traffic on the street or highway.

Effective: August 17, 2008

Hit and Run Violations;

Larceny to Include Theft of Fixtures Affixed to Real Property

Senate Bill 944 (Session Law 2008-128)

Amends G.S. 20-166(a) making it a Class F felony to leave the scene of a crash involving death or serious bodily injury. Previously, the statute made it a Class H felony to leave the scene of a crash involving death or injury. Leaving the scene of a crash involving injury is still a Class H felony, but under new G.S. 20-166(a1). DMV shall revoke the license of a person convicted of violating either offense for a period of one year, unless the court makes a finding that a longer period of revocation is appropriate.

Creates new G.S. 14-83A abolishing the common law distinction that provided that personal property that has become affixed to real property is not subject to a charge of larceny. Any person who removes or takes and carries away any property that is affixed to real property, with the intent to steal the property, is guilty of larceny.

Effective: December 1, 2008

Street Gang Prevention and Intervention

Senate Bill 1358 (Session Law 2008-56)

Amends G.S. 143B-549 to direct each county's Juvenile Crime Prevention Council, which are the planning bodies for community-based programs serving juveniles and their families, to assess the needs and resources available for juveniles regarding involvement or risk of involvement with gangs and to develop intervention strategies for such juveniles.

Amends G.S. 143B-557 to expand the powers and duties of the State Juvenile Crime Prevention Council to include a focus on gang prevention and to require a review of the level of gang activity statewide and an assessment of the progress of the State, and of local governments, in gang prevention and addressing the needs of juveniles identified as being associated with gang activity.

Requires reports by certain State agencies to legislative committees concerning gang issues.

Effective: July 6, 2008

Resale of Tickets Via Internet

Senate Bill 1407 (Session Law 2008-158)

Enacts G.S. 14-344.1 allowing a person to resell an admission ticket on the Internet at a price greater than the ticket's face value unless the venue where the event will occur prohibits the resale of the ticket at a higher price. A person who offers to resell tickets under this statute must guarantee a full refund if: the event is cancelled; the purchaser is denied admission through no fault of the purchaser; or the ticket is not delivered to the purchaser in the manner described by the reseller and the purchaser consequently is unable to attend the event. This statute does not apply to student tickets issued by institutions of higher education for North Carolina sporting events.

Enacts new G.S. 14-344.2 to prohibit the sale, use or possession of ticket purchasing software designed to interfere with a ticket seller's measures for an equitable buying process.

Amends G.S. 14-344 to exempt sales pursuant to new G.S. 14-344.1 from the existing scalping prohibitions.

Effective: August 3, 2008 through June 30, 2009

Technical Corrections to Larceny/Organized Retail Theft

Senate Bill 1632 (Session Law 2008-187)

Currently, G.S. 14-71(b) makes it a Class H felony for a person to knowingly receive or possess property in the custody of a law enforcement agency that was explicitly represented to

the person by an agent of the law enforcement agency as stolen. This statute is amended so that it also applies when the representation was made by a person authorized to act on behalf of a law enforcement agency.

Currently, G.S. 14-86.6 makes it a Class H felony for a person to engage in organized retail theft by conspiring with another person to commit theft of retail property from a retail establishment, with a value exceeding \$1,500. aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration. This statute is amended to clarify that when a person steals retail property from multiple retail establishments, the value of all the property stolen can be counted together to determine if it meets the \$1,500. amount over the 90-day period.

Effective: August 7, 2008

Anatomical Gifts

Senate Bill 1651 (Session Law 2008-153)

G.S. 130A-412.14, which required law enforcement officers, firefighters, paramedics and other emergency rescuers to make a reasonable search of an individual who was believed to be dead or near death for a document indicating their donor status, is repealed. G.S. 90-602 now governs which was amended to authorize, but not require, such a search.

Effective: August 2, 2008

Vehicle Size and Weight Changes

Senate Bill 1695 (Session Law 2008-221)

This bill makes several changes to laws related to vehicle size and weight.

Effective: September 1, 2008

Felony Child Abuse Involving Prostitution/ Sex Offender Registration of Email Address

Senate Bill 1736 (Session Law 2008-220)

Amends the definition of sexually violent offense, in G.S. 14-208.6, to include felony child abuse involving prostitution with or by a child or the commission of a sexual act upon a juvenile, so that any person convicted of these offenses is required to register as a sex offender.

Amends G.S. 14-208.7 to require a sex offender to register any online identifier that the person uses or intends to use. An online identifier means electronic mail address, instant message screen name, user ID, chat or other Internet communication name. Amends G.S. 14-208.9 to require registered sex offenders to notify the Sheriff, within 10 days, of any changes to or new online

identifiers. Amends G.S. 14-208.11(a) making it a Class F felony to fail to inform the Sheriff of any new or changes to existing online identifiers.

Adds new G.S. 14-208.15A allowing DCI to release registry information regarding a registered offender's online identifier only to an entity for the purpose of allowing the entity to prescreen users or to compare the online identifier information with information held by the entity.

Effective: May 1, 2009

Vehicle Registration/Inspection Changes

Senate Bill 1787 (Session Law 2008-190)

Amends G.S. 20-183.4C as follows:

Allows a used vehicle acquired from a private sale in this State, or an unregistered vehicle, to be registered if it has received a passing inspection within the past 12 months;

Authorizes DMV to issue a three-day permit (was a one-way permit) that allows an insured vehicle with an expired inspection to be driven from the place the vehicle is parked to an inspection station, repair shop, or DMV office;

Limits the 10-day temporary permit to vehicles that fail an emission inspection. A 10-day permit is no longer allowed for a safety inspection failure; that driver must obtain the three-day permit.

Effective: October 1, 2008

Child Abuse

Senate Bill 1860 (Session Law 2008-191)

Amends G.S. 14-318.2 to raise the punishment for misdemeanor child abuse from a Class 1 misdemeanor to a Class A1 misdemeanor.

Amends G.S. 14-318.4 creating two new felony child abuse crimes. A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child, or a Class H felony if the act or omission results in serious physical injury to the child. Serious bodily injury is defined as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. Serious physical injury is physical injury that causes great pain and suffering.

Effective: December 1, 2008

Reporting of Involuntary Mental Commitments to NICS/Restoration Process

Senate Bill 2081 (Session Law 2008-210)

Creates new G.S. 122C-54(d1) requiring that the involuntary commitment of an individual to inpatient or outpatient mental health treatment when the person is found to be a danger to himself or others, or when an individual is found not guilty by reason of insanity, or incompetent to proceed to trial in a criminal case, be reported by the clerk of superior court to the National Instant Background Check System (NICS) used for determining if a person can purchase a firearm. Also adds new G.S. 122C-54.1 to create a process for a person to file a petition with a district court judge, upon the expiration of any current inpatient or outpatient commitment, to remove the mental commitment bar to purchasing, possessing or transferring a firearm. An individual who has been found not guilty by reason of insanity may not petition a court for restoration under this section.

Effective: December 1, 2008