



# Police Law Bulletin



City Attorneys' Office

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## 2009 Legislation Affecting Criminal Law and Procedure



Below are brief summaries of selected legislation affecting criminal law and procedure that were enacted during the 2009 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.ncga.state.nc.us](http://www.ncga.state.nc.us); 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.

**Smoking Prohibited in Certain Public Places**

Session Law 2009-27

House Bill 2

Creates G.S. 130A-496 to prohibit smoking in all enclosed areas of restaurants and bars except for designated smoking guest rooms in a lodging establishment or a cigar bar. For purposes of this statute, a "bar" is defined as an establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001; a "restaurant" is defined as a food and lodging establishment that prepares and serves drink or food as regulated by the Commission for Public Health; and "enclosed area" means an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one. A violation after being notified to stop smoking is an infraction punishable by a fine of no more than \$50.00.

Local governments may adopt ordinances limiting smoking in local government buildings and vehicles and in public places. Local ordinances may not prohibit smoking in tobacco shops, cigar bars, private clubs, designated smoking rooms in hotels and motels, movie production sets when smoking is by actors, and private residences and vehicles (refer to G.S. 130A-492 for definitions). A violation of such a local ordinance, after being notified to stop smoking, is an

infraction punishable by a maximum fine of \$50.00. Administrative penalties may be imposed by the local health director against operators of businesses who allow unlawful smoking.

Effective: January 2, 2010

**Larceny, Destruction or Vandalism of Portable Toilets**

Session Law 2009-37

House Bill 616

Creates new G.S. 14-86.2 to make it a Class 1 misdemeanor to steal, remove from its temporary location, or willfully destroy, deface, or vandalize a portable toilet or pumper truck.

Effective: December 1, 2009

**Increased Raffle Limits**

Session Law 2009-49

House Bill 85

Amends G.S. 14-309.15 to increase raffle limits from \$50,000.00 to \$125,000.00, and to allow real property worth up to \$500,00.00 to be offered as a raffle prize.

Effective: June 1, 2009

**Definition of Abused Juveniles**

Session Law 2009-38

House Bill 1272

Amends definition of abused juveniles in G.S. 7B-101(1)(d) to add the offenses of rape of a child by adult offender (G.S. 14-27.2A) and sexual offense with a child by an adult offender (G.S. 14-27.4A).

Effective: May 27, 2009

**Dissemination of Criminal Intelligence to School Principal**

Session Law 2009-93

House Bill 1327

Creates new G.S. 14-50.27A to allow a law enforcement agency to disseminate an assessment of criminal intelligence information to the principal of a public or private school when necessary to avoid imminent danger to the life of a student or employee of the school or to public school property.

Effective: December 1, 2009

**Clarification of Conditional Restoration**

Session Law 2009-99  
House Bill 1198

Amends Section 33 of Session Law 2007-493 to clarify that persons who had a three year waiting period for a hearing on conditional restoration of a revoked license when the law (G.S. 20-19(i) Revocation for DWI Involving Fatality) was changed to a five year period were not affected by the change.

Effective: June 12, 2009

**Use of Deadly Force Statistics**

Session Law 2009-106  
House Bill 266

Creates new G.S. 114-10.02 to require the Division of Criminal statistics to collect, maintain and annually publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by State and local law enforcement officers in the course and scope of their official duties.

Effective: January 1, 2010

**Failure of School Board Member to Discharge Duties**

Session Law 2009-107  
House Bill 43

Amends G.S. 14-230 to add school board members to the list of officials for whom it is a Class 1 misdemeanor to willfully omit, neglect or refuse to discharge the duties of their office.

Effective: December 1, 2009

**Survivor's Alternate Benefit**

Session Law 2009-109  
Senate Bill 411

Amends G.S. 135-5 to provide that when a law enforcement officer is killed in the line of duty, the principal beneficiary who is designated to be paid the accumulated retirement contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance if the officer had 15 years of service even if the officer had not attained the age of 50 years old. The change applies to any death occurring on or after January 1, 2007.

Effective: June 16, 2009

**Size of Vehicles**

Session Law 2009-128  
Senate Bill 1000

Amends G.S. 20-116 to: restrict the overall length of a single vehicle with two or more axles to forty feet; require that vehicles transporting equipment or poles for emergency utility repair at night have trailers that are no longer than 53 feet; increase the maximum length for a combination of a house trailer used as a mobile home with its towing vehicle to 60 feet.

Effective: December 1, 2009

**Emailing or Texting While Operating Vehicle**

Session Law 2009-135  
House Bill 9

Creates new G.S. 20-137.4A making it unlawful for a person to operate a vehicle on a public street or vehicular area while using a mobile telephone to send or read email or text messages; it does not prohibit reading a name or number stored in the device nor any caller identification information. Provides exceptions including: when the operator is parked or stopped; the operator is police, fire or EMS performing official duties; or when voice operated technology is used. Violation is an infraction punishable by a penalty of \$100.00 and court costs. A violation while operating a school bus is a Class 2 misdemeanor punishable by a minimum \$100.00 fine.

Effective: December 1, 2009

**Silver Alerts For Any Aged Individuals Suffering Dementia**

Session Law 2009-143  
House Bill 1129

Amends G.S. 143B-499.8 to allow a silver alert to be issued for any person suffering from dementia or other cognitive impairment regardless of age.

Effective: June 19, 2009

**State Of Emergency Evacuations**

Session Law 2009-146  
Senate Bill 256

Amends G.S. 14-288.12(b) and G.S. 166A-14(a) to clarify that counties and cities have the authority to order evacuations during a state of emergency and that the emergency management immunity statute applies to such situations.

Effective: June 19, 2009

**Passing Stopped School Bus**

Session Law 2009-147

House Bill 440

Amends G.S. 20-217(g) to increase the punishment, from a Class I to a Class H felony, when a person passes a stopped school bus and strikes a person resulting in his or her death. Adds new G.S. 20-217(h) to allow the use of automated camera and video recording systems to be used to detect and prosecute violations of the statute.

Effective: December 1, 2009

**Regulated Metals**

Session Law 2009-200

House Bill 323

This bill makes various amendments to G.S. 66-11, Dealing in regulated metals, including:

Requiring a secondary metals recycler to issue a receipt to the person delivering the regulated metals which the secondary metals recycler purchases. The receipt must be signed by the person delivering the metals, and the secondary metals recycler must be able to provide documentation regarding the employee who completed the transaction;

In transactions involving catalytic converters not attached to a vehicle, and central air conditioner coils or condensers, requires the secondary metals recycler to obtain a clear ink or electronic copy of the fingerprint of the person delivering the materials unless the recycler already has the fingerprint on file;

Clarifies that, during regular business hours, a law enforcement officer may inspect any and all purchased regulated metals property and records.

Prohibits the purchase of central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, unless purchased from a company, contractor or individual in the business of installing, replacing, maintaining, or removing these items. Cash payments may not be accepted;

Prohibits the cash purchase of nonferrous metal property in an amount greater than \$100.00 per transaction;

Except from a government or manufacturer who generates or sells these items, prohibits the purchase of any regulated metal marked with the initials or identification of a telephone, cable, electric, water, public utility, brewer, government entity, or railroad; any utility access cover; street light pole or fixture; road or bridge guard rail; street sign; water meter cover; metal beer keg; traffic control sign; traffic light signal; or historical marker, grave marker or burial vase.

Effective: October 1, 2009

## **Preservation of DNA and Biological Evidence**

Session Law 2009-203

House Bill 1190

Makes various changes to the statutes regarding the preservation of DNA and biological evidence, and the defendant's access to such evidence, including:

Amends G.S. 15A-267(a) to provide a defendant with pretrial access to a complete inventory of all physical evidence collected in connection with the investigation;

Amends G.S. 15A-267(c) to make a court order for DNA testing based on a defendant's pretrial motion mandatory rather than discretionary;

Adds G.S. 15A-268(a2) to require the SBI to promulgate and publish minimum guidelines for retention and preservation of biological evidence;

Adds new G.S. 15A-268(a3) and (a4) to set forth specific responsibilities of the presiding judge and Clerk of Superior Court when physical evidence is offered or admitted into evidence in a criminal proceeding;

Adds new G.S. 15A-268(a5) to provide that the duty to preserve biological evidence may not be waived by a defendant without a court proceeding

Amends G.S. 15A-268(a6) making several changes to the duration for which biological evidence must be preserved;

Creates new G.S. 15A-268(a7) so that, upon written request by the defendant, the custodial agency must prepare an inventory of biological evidence preserved in defendant's case;

Creates G.S. 15A-268(g) to provide that if an entity cannot produce evidence required to be preserved, the chief evidence custodian shall provide an affidavit describing the efforts taken to locate the evidence and affirming that it could not be found. If the court finds destruction of the evidence to have violated the defendant's due process rights, the court shall order an appropriate remedy, including dismissal of charges;

Creates new G.S. 15A-268(i) to make it a Class I felony (if evidence related to a noncapital case) or a Class H felony (if evidence related to a first degree murder case) for a person to knowingly and intentionally destroy, alter, conceal or tamper with evidence that is required to be preserved with the intent to impair the integrity of the evidence, prevent it from being subjected to DNA testing, or prevent production or use of that evidence in a proceeding;

Amends G.S. 15A-269 to provide that if a court orders post-conviction DNA testing, the testing must be conducted by an SBI-approved testing facility;

Amends G.S. 15A-270.1 to provide that the court must appoint counsel for an indigent defendant who appeals an order denying the defendant's motion for DNA testing.

Effective: December 1, 2009

**Altering Serial Number of a Firearm**

Session Law 2009-204

House Bill 787

Creates new G.S. 14-160.2 making it a Class H felony to: alter, deface, destroy or remove the serial number, manufacturer's identification plate, or other permanent distinguishing number or identification mark from a firearm with the intent to conceal or misrepresent the identity of the firearm; or to knowingly sell, buy, or be in possession of such a firearm.

Effective: December 1, 2009

**Regulation of Devices That May Be Used As Drug Paraphernalia**

Session Law 2009-205

House Bill 722

Creates new G.S. 90-113.82 to require glass tubes and splitters to be stored and sold from behind a retailer's counter; and to require a retailer who transfers a glass tube or splitter to any member of the public to obtain photo identification from the transferee, record the transferee's name and current address, ensure the transferee signs his or her name verifying that the item will not be used as drug paraphernalia; and to require that the retailer retain such records for a minimum of two years and make them readily available, within 48 hours of the transaction, to law enforcement officials. A retailer, or employee of the retailer, who willfully and knowingly violates the statute is guilty of a Class 1 misdemeanor. Any person who knowingly makes a false statement or representation in fulfilling the requirements of the statute is also guilty of a Class 1 misdemeanor.

Effective: December 1, 2009

**Novelty Lighters**

Session Law 2009-230

Senate Bill 652

Creates new G.S. 66-16.1 to make it unlawful to sell, offer for sale, or give or distribute for retail sale or promotion, a novelty lighter. A violation is an infraction punishable by a \$500.00 fine.

Effective: December 1, 2009

**Speeding in Work Zones**

Session Law 2009-234

Senate Bill 649

Amends G.S. 20-141 to require the Department of Transportation to post speed limit signs not only at the beginning and ending of the work zone indicating same, but also at the beginning and ending of each segment of a highway work zone indicating the fine for speeding in that segment of the work zone. A law enforcement officer issuing a citation for speeding in a highway work zone must indicate the vehicle speed and speed limit posted in the segment of the work zone and determine whether the individual committed a violation of G.S. 20-141(j1) (speeding more than 15 mph over the posted speed limit or speeding over 80 mph)

Effective: December 1, 2009

**Wearing of Military Medals by Public Safety**

Session Law 2009-240

House Bill 631

Creates new G.S. 165-44.01 to provide that uniformed public safety officers, including law enforcement officers, firefighters and emergency medical services personnel, are authorized to wear any medal, badge, ribbon, or other decoration awarded to such persons by the armed forces of the United States, the North Carolina Air National Guard or the North Carolina Army National Guard, during the business week prior to Veterans Day, Memorial day, and the Fourth of July and the day of and the business day immediately following these holidays.

The employer of a uniformed public safety officer can still prohibit wearing of the award if the employer determines that wearing of the military service medals poses a safety hazard. The military service medals cannot be worn in a manner to cover the public safety officer's badge.

Effective: June 30, 2009

**Internet Tickets**

Session Law 2009-255

House Bill 309

Amends Session Law 2008-158 to remove the sunset provision for G.S. 14-344.1, Internet sale of admission tickets in excess of printed price, thus making it a permanent statute.

Effective: July 6, 2009



**Boater Safety Education Required For Boats of 10 HP or More**

Session Law 2009-282

Senate Bill 43

Creates new G.S. 75A-16.2 to prohibit the operation of a vessel on public waters with a motor of 10 horsepower or more unless the operator has met the requirements for boater safety education. A violation is an infraction requiring the payment of court costs but no penalty.

Effective: May 10, 2010

**Targeted Picketing**

Session Law 2009-300

House Bill 885

Creates new G.S. 14-277.4A making it a Class 2 misdemeanor for a person to engage in targeted picketing when the person knows or should know that the picketing would cause a reasonable person to fear for the person's safety or the safety of the person's immediate family or close personal associates, or that it would cause substantial emotional distress as defined in G.S. 14-277.3A(b)(4). "Targeted picketing" is defined as picketing, with or without signs, that is specifically directed towards a residence, or one or more of its occupants, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence.

Effective: December 1, 2009

**Renewal of Concealed Handgun Permits**

Session Law 2009-307

House Bill 1132

Amends G.S. 14-415.16 to include the following: At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a notice to the permittee explaining that the permit is about to expire and including information about the renewal requirements; allows the holder of a permit to apply for renewal anytime within the 90 day period prior to its expiration date rather than at least 30 days prior to expiration; if a permittee applies for renewal within the 90 day period prior to the permit's expiration, makes the existing permit valid beyond its expiration date until the permittee either receives a renewal permit or is denied a renewal permit; and allows the sheriff to waive the requirement of taking another firearms safety and training course if the permittee does not apply to renew a permit prior to its expiration, but does so within 60 days after the permit expires.

Amends G.S. 14-415.10(4) to include within the definition of "qualified former sworn law enforcement officer" a person who has 20 or more aggregate years of part-time or auxiliary law enforcement service, which effectively provides the person with an exemption from the firearms safety and training course requirement for a concealed handgun permit.

Effective: January 1, 2010

**Juvenile Code**

Session Law 2009-311

House Bill 1449

Makes numerous changes to the Juvenile Code, including:

Amends G.S. 7B-302, which requires the Department of Social Services to keep reports and information of abuse, neglect or dependency confidential, to specifically direct the disclosure of confidential information to any federal, State or local government in order to protect a juvenile from abuse or neglect; to allow the information to be examined by a juvenile's guardian ad litem or the juvenile, including a juvenile who has reached 18 years of age or has been emancipated; allow a district or superior court judge presiding over a civil matter in which DSS is not a party to order the release of confidential information after determining the information is relevant, necessary and otherwise unavailable; directing a district or superior court judge presiding over a criminal or delinquency matter to conduct an in camera review prior to releasing to the defendant or juvenile any confidential records other than those which the defendant or juvenile is otherwise entitled to by this section; and allowing the disclosure of confidential information to a parent, guardian, custodian or caretaker in accordance with G.S. 7B-700.

Adds new G.S. 7B-1700.1 to repeat the duty to report suspected instances of juvenile abuse, neglect or dependency, already found in G.S. 7B-301, but with a specific reference to juvenile court counselors having such a duty.

Amends G.S. 7B-1904 to require an official executing an order for nonsecure custody of a juvenile alleged to be delinquent or undisciplined to give a copy of the petition and order to the person or agency with whom the juvenile is being placed.

Amends G.S. 7B-2503(1)c and G.S. 7B-2506(1)c to allow the court at disposition to place an undisciplined or delinquent juvenile in DSS custody only if the DSS director has received notice and an opportunity to be heard.

Effective: October 1, 2009

**Safety or Emissions Inspections**

Session Law 2009-319

House Bill 882

Amends G.S. 20-183.8 making it a Class 3 misdemeanor for a person to perform a safety or emissions inspection without a license.

Effective: December 1, 2009

### **Solicitation of a Child by Electronic Device**

Session Law 2009-336

Senate Bill 65

Amends G.S. 14-202.3 to prohibit a person, with the intent to commit an unlawful sex act, to solicit by means of a computer or any other device capable of electronic data storage or transmission, a child who is, or whom the defendant believes to be, less than 16 years of age and at least 5, rather than 3, years younger than the defendant.

Effective: December 1, 2009

### **Protective Orders**

Session Law 2009-342

House Bill 115

Amends G.S. 50B-4 and G.S. 50B-4.1 to provide that a “valid protective order” includes an emergency or ex parte order entered under G.S. Chapter 50B. Consequently, violation of an emergency or ex parte DVPO is a Class A1 misdemeanor under G.S. 50B-4.1 and subjects the offender to the criminal consequences found in G.S. 50B-4.1 (mandatory arrest and increased punishment, each under specified circumstances).

Effective: July 24, 2009

### **Regulation of Certain Reptiles**

Session Law 2009-344

Senate Bill 307

Amends G.S. 14-417 and adds new G.S. 14-417.1 and 14-417.2 to require venomous reptiles, large constricting snakes, and crocodylians, other than the American alligator, to be transported in secure containers that are escape-proof and bite-proof. Permanent enclosures must be escape-proof, bite-proof, have an operable lock, and be labeled with the type of reptile and a safety protocol including emergency contact information, identification of the local animal control office, first aid procedures, and an escape recovery plan. If any of these reptiles escape, the owner or person in possession must immediately notify local law enforcement.

Amends G.S. 14-418 to make it unlawful for anyone to handle one of the aforementioned reptiles in a manner that intentionally or recklessly exposes another person to unsafe contact with the reptile. Safe and responsible handling for purposes of animal husbandry, exhibition, training, transport and education is allowed.

Amends G.S. 14-419 to authorize, empower and direct a law enforcement or animal control officer with probable cause to believe that a violation of these laws has occurred, to immediately investigate the violation or impending violation and seize the reptiles involved.

Violation is a class 2 misdemeanor unless a person, other than the owner, the owner's agent, employee or member of the owner's immediate family suffers a life threatening injury or is killed, then it is a Class A1 misdemeanor.

Amends 14-422 to make it a Class A1 misdemeanor to intentionally release into the wild a nonnative venomous reptile, a large constricting snake, or a crocodilian.

Effective: December 1, 2009

### **Settlement Embezzlement by Real Estate Agent**

Session Law 2009-348

Senate Bill 764

Amends G.S. 45A-8 to clarify that a settlement agent at a loan closing who fails to properly disburse the funds is subject to being charged with embezzlement under G.S. 14-90.

Effective: December 1, 2009

### **Motor Vehicle Law Changes**

Session Law 2009-376

Senate Bill 368

This bill makes numerous changes to the Motor Vehicle Code including, but not limited to, the following:

Amends G.S. 20-101 to clarify the requirements for marking business vehicles;

Amends G.S. 20-117 to change the length of the red or orange flag required for a load on any vehicle that extends more than 4' beyond the rear of the bed to be no less than 18" both in length and width, rather than 12".

Amends G.S. 20-122.1 to require that any motor vehicle with a gross vehicle weight rating of at least 10,001 pounds or more and is operated on the streets or highways of this State must be equipped with safe tires. A tire is unsafe if any of the following apply: 1. it is cut, cracked or worn so as to expose tire cord; 2. there is a visible tread separation or chunking; 3. the steering axle tire has less than four thirty-seconds inch tread depth at any location around the circumference of the tire on any major tread groove; 4. any non-steering axle tire has less than two thirty-seconds inch tread depth around the circumference of the tire in any major tread groove; or 5. the tread wear indicators are in contact with the roadway at any location around the circumference of the tire on any major tread groove.

Amends G.S. 20-135.2A eliminating the seat belt exemption for garbage and recycling truck drivers. The exemption now only applies to passengers.

Amends G.S. 20-136.1 clarifying that the prohibition against a television, computer, or video player being viewed by a driver while driving does not apply to global positioning systems, turn-by-turn navigation displays or similar navigation devices, factory-installed or aftermarket global positioning systems or wireless communications devices used to transmit or receive data as part of a digital dispatch system, equipment that displays audio system information, functions or controls, or weather, traffic, and safety information. There is also an exception for law enforcement and emergency personnel.

Effective: October 1, 2009

### **Larceny of Motor Vehicle Part**

Session Law 2009-379

House Bill 1256

Adds new G.S. 14-72.8 which provides that, unless the conduct is covered under some other provision of law providing for a greater punishment, larceny of a motor vehicle part is a Class I felony if the cost of replacing and installing the part is \$1,000 or more.

Effective: December 1, 2009

### **Mandatory DVPO Arrest**

Session Law 2009-389

House Bill 1464

Amends G.S. 50B-4.1 to make it mandatory for an officer to arrest, with or without process, a suspect who the officer has probable cause to believe has violated certain provisions of a valid domestic violence protective order. This law is intended to overrule the case of *Cockerham-Ellerbee v. Town of Jonesville*, 176 N.C. App. 372 (2206) which held that the statute, despite its language, did not actually require an arrest for certain violations of a DVPO but left the decision up the discretion of the officer.

Effective: July 31, 2009

### **Clarify Local Special Separation Allowance**

Session Law 2009-396

House Bill 816

Amends G.S. 143-166.42 to provide that any city or county can employ a retired local law enforcement officer in a part-time capacity, in a public safety position, and the officer will not cease receiving the Special Separation Allowance benefit so long as the retired officer's part-time employment does not require the officer's participation in the Local Governmental Employees' Retirement System. In order to not be required to participate in the Local Governmental Employees' Retirement System, a retired officer who goes back to work part-time must work less than 1,000 hours and must earn less than \$28,080 or less than 50% of compensation, excluding

termination payments, reported to the Retirement System during the 12 months of service preceding the effective date of the officer's retirement.

The amendment also clarifies that a retired local law enforcement officer's Special Separation Allowance benefit cannot be terminated if the officer returns to work for the State of North Carolina or a private business employer. After a local law enforcement officer retires, their Special Separation Allowance benefit will only be terminated: 1. upon the officer's reemployment by a local government in a capacity requiring participation in the Local Governmental Employees' Retirement System; 2. upon the death of the officer; or 3. on the last day of the month in which the officer becomes 62 years of age.

Effective: July 31, 2009

### **Removal of Electronic Monitoring Devices**

Session Law 2009-415

Senate Bill 713

Creates new G.S. 14-226.3 making it unlawful for any person to remove, destroy or circumvent the operation of any electronic monitoring device, or solicit another to do so, when the device is used as part of a house arrest program or to track the location of the person as a condition of pretrial release or bond, probation or parole or post-release supervision. The law does not apply to persons who are on electronic monitoring as a result of the sex offender registration program which has its own punishment or to a juvenile offender. Violation by a person who is required to comply with electronic monitoring as a result of a conviction of a criminal offense is a felony one class lower than the most serious underlying felony or a misdemeanor one class lower than the most serious underlying misdemeanor, except that if the most serious underlying felony is a Class I felony, violation of this law is a Class A1 misdemeanor. Violation by a person required to comply with electronic monitoring as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation by any other person is a Class 2 misdemeanor.

Effective: December 1, 2009

### **Covering State Name, Year or Month Sticker on State License Plate With Frame**

Session Law 2009-456

House Bill 67

Amends G.S. 20-63 to make it an infraction for an operator of a motor vehicle to cover the State name, year sticker, or month sticker on a registration plate with a license plate frame. This section does not prohibit transparent covers which do not interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system. Only a warning ticket may be issued for a violation until November 30, 2010.

Effective: December 1, 2009

**No Operation of Golf Carts on Public Streets by Persons Less than 16;  
Municipalities Authorized to Regulate Golf Carts**

Session Law 2009-459

House Bill 121

Prohibits a person under the age of 16 from operating a golf cart upon a public street, road or highway. Allows a municipality, by ordinance, to regulate the operation of golf carts on any public street, road or highway where the speed limit is 35 mph or less within the municipal limits or on any property owned or leased by the city. Also allows a city, by ordinance, to require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and hours and methods of operation.

Effective: October 1, 2009

**Assault on Search and Rescue Animal**

Session Law 2009-460

House Bill 1098

Amends G.S. 14-163.1, assault on a law enforcement agency or assistance animal, to also make it unlawful to assault a search and rescue animal which is defined as an animal that is trained and may be used to assist in search and rescue operations.

Effective: December 1, 2009

**Weight Measurement for Meth Trafficking**

Session Law 2009-463

Senate Bill 1091

Amends G.S. 90-95 to clarify that the charge of trafficking methamphetamine or amphetamine is based on the weight of the entire powder or liquid mixture rather than the weight of the actual amount of the controlled substances in the powder or liquid mixture.

Previously, one statute made it unlawful to traffic in both methamphetamine and amphetamine, with the penalties for either violation the same. G.S. 90-95 is amended to create a separate subsection for trafficking in amphetamine. It reduces the penalty for this offense by two class levels from the previous law. The penalties for trafficking in methamphetamine remain unchanged.

Effective: September 1, 2009

### **Introduction of Lab Reports and Related Documents**

Session Law 2009-473

Senate Bill 252

Amends various state statutes [G.S. 8-58.20, 20-139.1, and 90-95] regarding the introduction of lab reports and related documents to comply with the requirements of the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts* [see summary of decision in September/October Police Law Bulletin]. Provides that effective for all charges filed October 1, 2009 or after, if the State gives the defendant 15 business days notice of its intent to offer (1) the chain of custody statement, (2) the drug analysis report, and/or (3) the Chemical Analyst's affidavit for analyzing blood or breath and the defendant fails to file a written objection within 5 business days of trial the statement, report or affidavit is admissible. If the defendant files a timely objection, the admissibility of the statement, report or affidavit shall be determined and governed by the appropriate rules of evidence. When the presence of the chemical analyst in district court is deemed necessary, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

Effective: October 1, 2009

### **Precious Metal Business Permitting**

Session Law 2009-482

House Bill 1637

This bill makes numerous changes to the precious metals laws, which include, but are not limited to, the following:

Amends G.S. 66-164 to add palladium to the definition of precious metals, and modifies the definition of a dealer to include any person who purchases precious metals from the public, other than by an exempted transaction. The exempt transactions include: 1. Direct purchases for inventories by permanently located retail merchants from manufacturers or wholesalers of precious metals; 2. Licensed pawnbrokers; and 3. Barter and exchange of precious metals when the transaction does not include a sum of money. Repealed is the exemption for a retail merchant who purchases precious metal from the public incidental to a main business with those purchases constituting 10% or less of the total purchases.

Amends G.S. 66-165 to raise the annual fee for dealer and special occasion permits from \$10. to \$180, and the initial fee for employee compliance certificates from \$3. to \$10. with an annual renewal fee of \$3. A dealer, nor an employee of the dealer, may have a conviction for a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar charges unless that person has had his or her rights restored for five years or longer immediately preceding the date of application or employment.

Amends G.S. 66-169 to require a dealer to maintain consecutively numbered records containing specified information for a minimum of two years. A copy of each record entry must be filed



within 48 hours of the transaction to law enforcement in the manner authorized by the applicable agency.

Effective: October 1, 2009 for persons who were not exempt from the laws prior to October 1, 2009

January 1, 2010 for persons who were exempt from the laws prior to October 1, 2009

### **Sex Offenders Prohibited From Driving Buses With Children**

Session Law 2009-491

House Bill 1117

Amends various statutes to prohibit a person who is required to register as a sex offender from obtaining a commercial drivers license (CDL) with a P (passenger vehicle) or S (school bus) endorsement. The Division of Motor Vehicles is required to disqualify a sex offender from using a currently issued CDL with a P or S endorsement unless the CDL was issued prior to December 1, 2009, in which case the driver will not be disqualified until the CDL expires as long as the driver is not convicted of another offense requiring registration as a sex offender. Adds G.S. 20-27.1 to make it a Class F felony for a person required to register as a sex offender to drive a commercial passenger vehicle or a school bus without a valid CDL with a P or S endorsement. Amends G.S. 20-37.14A to make it a Class I felony for any person to make a false statement to DMV about being a convicted sex offender subject to registration.

Effective: December 1, 2009

### **Motorcycle Learner's Permit**

Session Law 2009-492

Senate Bill 64

Amends G.S. 20-7 to modify the requirements for a person under age 18 to obtain a motorcycle learner's permit to include a requirement that the person successfully complete the Motorcycle Safety Foundation Basic Rider Course or the North Carolina Motorcycle Safety Education Program Basic Rider Course. The learner's permit is valid for twelve months, rather than 18, and can be renewed for one additional six month period. Also amends G.S. 20-7 to clarify that a person under 18 with a full provisional license may obtain a motorcycle endorsement. The amendment also modifies the requirements for a person under age 18 to obtain a motorcycle endorsement providing that the person must: 1. pass a written or oral test concerning motorcycles; 2. provide proof of successful completion of either the Motorcycle Safety Foundation Basic Rider Course or Experienced Rider Course, or the North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course, or any course approved by the Commissioner of Motor Vehicles consistent with instruction provided through the Motorcycle Safety Instruction Program; and 3. pay the required fee. Prohibits a person under 18 with license having a motorcycle endorsement from driving the motorcycle with a passenger.

Effective: January 1, 2011

**Handicap Placards**

Session Law 2009-493

Senate Bill 203

Amends G.S. 20-37.5 to require that DMV design the removable windshield handicap parking placard so that the expiration date can be seen from at least 20 feet away.

Amends G.S. 20-37.6 to require that DMV issue a placard registration card with each placard issued to a handicapped person, and that the card be in the vehicle in which the placard is being used, and the person to whom the placard is issued be the operator or a passenger in the vehicle in which the placard is displayed.

Effective: January 1, 2010

**Sex Offender Registration**

Session Law 2009-498

House Bill 209

Amends G.S. 14-208.6 adding a conviction of G.S. 14-202.4(a), taking indecent liberties with a student, to the definition of sexually violent offenses that require the defendant to register as a sex offender.

Effective: December 1, 2009

**Timber Theft**

Session Law 2009-508

Senate Bill 990

Amends G.S. 14-135 to provide that a person who is guilty of cutting, injuring or removing timber is to be punished the same as larceny. Therefore, if the timber is valued at more than \$1000 the punishment is a Class H felony; if less, the punishment is a Class 1 misdemeanor. Previously, the punishment was a Class 1 misdemeanor regardless of value.

Effective: December 1, 2009

**Magistrates May Carry Concealed Handguns in Courthouse**

Session Law 2009-513

House Bill 473

Amends G.S. 14-269.4 to allow a magistrate to possess a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom. The magistrate must: 1. be in the building to discharge his or her official duties; 2. have a valid carry concealed weapons permit; 3. Have successfully completed a one-time weapons retention training similar to that provided to certified law

enforcement officers, and 4. Secure the weapon in a locked compartment when the weapon is not on the magistrate's person.

Effective: August 26, 2009

**Increased Penalty for Misdemeanor Death by Vehicle**

Session Law 2009-528

House Bill 889

Amends G.S. 20-141.4 to increase the punishment for misdemeanor death by vehicle from a Class 1 to Class A1.

Effective: December 1, 2009

**Salvia Divinorum Unlawful**

Session Law 2009-538

Senate Bill 138

Creates new G.S. 14-401.23 to make it unlawful for any person to knowingly or intentionally manufacture, sell, deliver or possess Salvia divinorum or Salvinorin A except: 1. employees or contractors of an accredited college or school of medicine or pharmacy at a public or private university in this State while performing medical or pharmacological research; or 2. possession, planting, cultivation, growing or harvesting strictly for aesthetic, landscaping or decorative purposes.

Effective: December 1, 2009

**Traffic Law Enforcement Statistics;  
Care of Minor Children Present at Arrest**

Session Law 2009-544

Senate Bill 464

Amends G.S. 114-10.01 to provide that agencies which are required to submit traffic law enforcement statistics must submit the information within 60 days of the close of each month. Any agency that does not submit the information as required shall be ineligible to receive any law enforcement grants available by or through the State until the information is submitted.

Amends G.S. 15A-401 to provide that when a law enforcement officer arrests an adult who is supervising minor children present at the time of arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to do so within a reasonable period of time, the law enforcement officer shall contact the county department of social services.

Effective: January 1, 2010

**Cyber-Bullying**

Session Law 2009-551

House Bill 1261

Creates new G.S. 14-458.1 which makes it a misdemeanor to use a computer or computer network to post certain specified false or altered information about a minor or to sign up a minor on pornographic websites or electronic mail sites with the intent to intimidate or torment the minor or the minor's parents or guardians. If the perpetrator is age 18 or older, violation is a Class 1 misdemeanor. If the perpetrator is under age 18, a violation is a Class 2 misdemeanor.

Effective: December 1, 2009