



Police Law Bulletin



City Attorneys' Office

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2010 Legislation Affecting Criminal Law and Procedure



Below are brief summaries of selected legislation affecting criminal law and procedure that were enacted during the 2010 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; 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.

Session Law 2010-5**Senate Bill 140****Felony Trespassing at Safe House**

Amends G.S. 50B-4.1 by adding new subsection (g1) which makes it a Class H felony for a person who is subject to a valid protective order, under G.S. Ch. 50B, to enter property operated as a safe house or haven for victims of domestic violence, where a person protected by the order is residing. The bill provides that a violation occurs regardless of whether the person protected by the order is actually present on the property.

Effective: December 1, 2010

Session Law 2010-16**Senate Bill 254****Increased Penalty for Malicious Abuse, Torture or Killing of Animal**

Amends G.S. 14-360(a1) by increasing the punishment, from a Class A1 misdemeanor to a Class H felony, for maliciously killing an animal by intentionally depriving the animal of necessary sustenance. Also amends G.S. 14-360(b) by increasing the punishment, from a Class I to a Class

H felony, for maliciously torturing, mutilating, maiming, beating, disfiguring, poisoning or killing an animal.

Effective: December 1, 2010

**Session Law 2010-94
House Bill 1403**

DNA Samples at Time of Arrest

This bill makes numerous amendments to the State's DNA Database Act of 1993, including:

Creates new G.S. 15A-266.3A which requires a DNA sample to be obtained from any person arrested for the following offenses: First and Second Degree Murder (G.S. 14-17); Manslaughter (G.S. 14-18); Rape and Other Sex Offenses found in Article 7A on the North Carolina General Statutes; Felonious Assault With a Deadly Weapon With Intent to Kill or Inflicting Serious Injury (G.S. 14-32); Assault Inflicting Serious Bodily Injury (G.S. 14-32.4(a)); Assault With a Firearm or Other Deadly Weapon Upon Governmental Officers or Employees, Company Police Officers, or Campus Police Officers (G.S. 14-14-34.2); Assault With a Firearm On a Law Enforcement, Probation, or Parole Officer Or On a Person Employed At a State or Local Detention Facility (G.S. 14-34.5); Assault or Affray On a Firefighter, An Emergency Medical Technician, Medical Responder, Emergency Department Nurse, or Emergency Department Physician (G.S. 14-34.6); Assault Inflicting Serious Injury On a Law Enforcement, Probation or Parole Officer or On a Person Employed at a State or Local Detention Facility (G.S. 14-34.7); any offense in Article 10 of the North Carolina General Statutes, Kidnapping and Abduction; any offense in Article 10A of the North Carolina General Statutes, Human Trafficking; First and Second Degree Burglary (G.S. 14-51); Breaking Out of Dwelling House Burglary (G.S. 14-53); Breaking or Entering a Place of Religious Worship (G.S. 14-54.1); Burglary with Explosives (G.S. 14-57); any offense in Article 15, Arson; Armed Robbery (G.S. 14-87); any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the North Carolina General Statutes, Sex Offender and Public Protection Registration Programs; Cyberstalking (G.S. 14-196.3); Stalking (G.S. 14-277.3A); and attempts, solicitations, or aiding and abetting any of the aforementioned offenses. **Note that misdemeanor assault on a law enforcement officer (G.S. 14-33(c)(4)) is not included.**

The DNA sample shall be a cheek swab. The arresting law enforcement officer must obtain, or cause to be obtained, the sample at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the sample shall not be taken until a probable cause determination has been made by a magistrate. G.S. 15A-534(a) is amended to provide that if a person is required to provide fingerprints or a DNA sample and has refused to do so, the pretrial release must include a condition requiring that the person arrested provide the sample or prints.

The arresting officer shall then forward, or cause to be forwarded, the sample to the appropriate laboratory for DNA analysis and testing. The SBI will provide the materials, supplies and postage prepaid envelopes necessary to obtain the DNA samples and to forward the samples to

an appropriate laboratory for analysis and testing. The record of identifying characteristics resulting from the DNA testing will be stored and maintained by the SBI.

At the time the DNA sample is taken, the officer (or person obtaining the sample) shall complete a form provided by the SBI detailing the sampling procedures. The form must be maintained in the case file and be made available to the prosecutor. After taking the DNA sample, the arresting officer, or person obtaining the DNA sample, must provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample. The Department of Justice is to provide the form for such notification.

The sample must be expunged if the prosecutor dismisses the charge, the person is acquitted, the person is convicted of a lesser-included misdemeanor not covered by the DNA sampling law, no charge was filed within the applicable statute of limitations, or three years pass from the date of the arrest without a conviction or active prosecution. In cases where no charges were filed or three years have passed with no action in the case, until June 1, 2012, the person arrested must petition the prosecutor to request expungement. After June 1, 2012, the prosecutor is responsible for seeking an expungement without a request from the person arrested. In cases where there was a dismissal, acquittal, or conviction of a lesser-included misdemeanor, the prosecutor must initiate the expungement. The person arrested may file a motion to compel the prosecutor to act or to contest a prosecutor's decision not to act. Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample will be inadmissible in the prosecution of the defendant for any criminal offense.

G.S. 15A-266.11 is amended so that any person who has access to DNA information contained in the State DNA Database or Databank who willfully discloses it in any manner to any person or agency not entitled to receive it will be guilty of a Class He felony rather than a Class 1 misdemeanor. Similarly, any person who, without authorization, willfully obtains DNA information from the State Database or Databank will be guilty of a Class H felony rather than a Class 1 misdemeanor.

Effective: February 1, 2011

**Session Law 2010-103
House Bill 80**

Electronic Sweepstakes Prohibited

Adds new G.S. 14-306.4 making it unlawful for any person to operate, or place into operation, an electronic machine or device to either conduct or promote a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize. Lengthy definitions are provided for the terms "electronic machine or device," "enter or entry," "entertaining display," "prize," and "sweepstakes." Each violation is a separate offense. A first offense is punishable as a Class 1 misdemeanor, second offenses are punishable as a Class H felony, and third or subsequent offenses are a Glass G felony. Activities otherwise lawfully conducted on Indian lands are exempted.

Amends G.S. 14-298 to make electronic machines or devices using an entertaining display in violation of new G.S. 14-306.4 subject to seizure.

Amends G.S. 14-306(a) to expand the definition of slot machine to include machines or devices that accept credit cards, debit cards, prepaid cards or any other method of payment to activate play, whether directly into the machine or by remote activation (previously, the machine or device had to be activated by the insertion of money or coin or other object).

Amends 14-306.1A(b) to expand the definition of a video gaming machine to include machines that require the use of a prepaid card (in addition to coins, tokens, credit or debit cards) to activate play, and clarifies that such payment may be made either directly into the machine or result in remote activation of the machine.

Effective: December 1, 2010

**Session Law 2010-104
House Bill 859**

Retired Probation Officers Exempt From Weapons Safety Course

Amends G.S. 14-415.10 to exempt qualified retired probation or parole officers from the firearms safety and training course generally required to obtain a permit to carry a concealed weapon. A qualified retired probation or parole officer is defined as an individual who retired from service as a State probation or parole certified officer who has been retired two years or less from the date of the permit application and who meets the following criteria: immediately before retirement, the individual met firearms training standards of the Department of Correction and was authorized by that Department to carry a handgun in the course of duty; the individual retired in good standing and was never the subject of any disciplinary action that would have prevented the individual from carrying a firearm; the individual has a vested right to benefits under the Teachers' and State Employees' Retirement System of North Carolina; and the individual is not prohibited by State or federal law from receiving a firearm.

Effective: December 1, 2010 and applies retroactively to any currently retired and qualified officer

**Session Law 2010-108
House Bill 1260**

Modifications to Ban on Possession of Firearms by Convicted Felon

Creates new G.S. 14-415.4 to establish a procedure that allows a person who has been convicted of a nonviolent felony in North Carolina, and whose civil rights have been restored for at least 20 years, to have his or her firearms rights restored.

The person seeking restoration must file a petition with the district court in the district where the person resides. The court may restore a petitioner's firearms rights (which is the legal right in this

State to purchase, own, possess, or have in one's care, custody or control any firearm) after a hearing if the court determines that the petitioner meets the following criteria and is not otherwise disqualified to have the right restored:

1. The petitioner is a resident of North Carolina and has been a resident for at least one year immediately preceding the filing of his or her petition.;
2. The petitioner has only one felony conviction and that conviction was for a nonviolent felony. A nonviolent felony is any felony except a Class A, Class B1 or Class B2 felony, or any Class C through Class I felony that includes an assault as an essential element of the offense, includes the possession or use of a firearm or other deadly weapon as an essential or nonessential element of the offense, that was committed with the offender being in possession of a firearm or other deadly weapon, or that requires registration under Chapter 14 Article 27A of the North Carolina General statutes (sex offender registration). Multiple felony convictions arising out of the same event and consolidated for sentencing count as only one felony.;
3. The petitioner's citizenship rights have been restored, pursuant to North Carolina law, for at least 20 years. (Typically, a person's civil rights are restored automatically in North Carolina after a person completes all the requirements of his or her sentence). If the conviction was in a jurisdiction other than North Carolina, the petitioner's citizenship rights have been restored, pursuant to the laws of the jurisdiction where the conviction occurred, for at least 20 years.;
4. The petitioner has not been convicted of any of the following misdemeanors since his or her conviction of the nonviolent felony: any offense under North Carolina General Statutes Chapter 14, Article 8, Assaults; Harassment of and Communication With Jurors (G.S. 14-225.2); Violating Court Orders (G.S. 14-226.1); Furnishing Poison, Controlled Substances, Deadly Weapons, Etc. to Inmates (G.S. 14-258.1); Weapons on Campus or Other Educational Property (G.S. 14-269.2); Carrying Weapons Into Assemblies and Establishments Where Alcoholic Beverages Are Sold and Consumed (G.S. 14-269.3); Weapons on State Property and In Courthouses (G.S. 14-269.4); Possession and Sale of Spring-loaded Projectile Knives Prohibited (G.S. 14-269.6); Impersonation of Firemen or Emergency Medical Services Personnel (G.S. 14-276.1); Impersonation of a Law Enforcement or Other Public Officer (G.S. 14-277); Communicating Threats (G.S. 14-277.1); Weapons at Parades, Etc., Prohibited (G.S. 14-277.2); Throwing, Dropping Objects at Sporting Events (G.S. 14-281.1); Exploding Dynamite Cartridges and Bombs (G.S. 14-283); Riots, Inciting a Riot (G.S. 14-288.2); certain Disorderly Conduct offenses (G.S. 14-288.4(a)(1) or (2)); Looting, Trespass During Emergency (G.S. 14-288.6); Assault on Emergency Personnel (G.S. 14-288.9); an ordinance enacted pursuant to G.S. 14-288.12, .13, or .14; Child Abuse (G.S. 14-318.2); Carrying a Concealed Weapon Without Permit in Possession or Failing to Notify Law Enforcement of Concealed Weapon (G.S.14-415.21(b); or Intentional Misrepresentation on CCW Certification for Qualified Retired Law Enforcement Officers (G.S. 14-415.26(d)).;
5. The Petitioner submits his or her fingerprints to the sheriff of the county where he or she resides for a criminal background check; and
6. The petitioner is not disqualified because:

- a. The petitioner is ineligible to purchase, own, possess or have in his or her custody, care or control a firearm under any provision of North Carolina law except G.S. 14-415.1 (possession of firearm by convicted felon);
- b. The petitioner is under indictment for a felony or probable cause exists against the petitioner for a felony;
- c. The petitioner is a fugitive from justice;
- d. The petitioner is an unlawful user of, or addicted to alcohol, any depressant, stimulant, narcotic drug or controlled substance;
- e. The petitioner has been dishonorably discharged from the armed forces;
- f. The petitioner has been found guilty, or received a prayer for judgment continued or suspended sentence for one or more of the crimes listed in section 4. above;
- g. The petitioner has received a prayer for judgment continued for a felony in addition to the nonviolent felony conviction;
- h. The petitioner is free on bond or personal recognizance pending trial, appeal or sentencing for a crime which would prohibit restoration of the person's firearms rights;
- i. A domestic violence emergency, ex parte order or protective order has been issued against the petitioner and is still in effect; or
- j. A civil no contact order has been issued pursuant to Chapter 50C of the North Carolina General Statutes, or similar out-of-state order, against the petitioner and the order is still in effect.

If a person's firearms rights are restored and the person is then convicted of a second or subsequent felony, the person's firearms rights are automatically revoked and shall not be restored.

A person who knowingly and willfully submits false information under this statute is guilty of a Class 1 misdemeanor and is permanently prohibited from having his or her firearms rights restored.

G.S. 14-415.1 (Possession of Firearms by Convicted Felon) is amended so that its prohibitions are not applicable to a convicted felon whose firearms rights have been restored pursuant to new G.S. 14-415.4, or to felons convicted of violations of North Carolina law, or similar state or federal laws, pertaining to anti-trust violations, unfair trade practices or restraints of trade.

G.S. 14-404(c) and G.S. 14-415.12(b) are amended to provide that persons whose firearms rights have been restored are eligible to obtain a pistol purchase or concealed handgun permit if they meet the other criteria for issuance.

Effective: February 1, 2011

The above bill also directs the North Carolina Attorney General to request that the U.S. Department of Justice and other federal agencies review the act and determine whether a person who qualifies under it may purchase and possess a firearm under federal firearms restrictions.

Effective: July 20, 2010

Session Law 2010-132

House Bill 1729

Motor Vehicle Law Changes

This bill made numerous changes to various motor vehicle laws including, but not limited to:

Amends G.S. 20-63(g) to clarify that covering a license plate with a frame or transparent, clear or color-tinted cover is an infraction only if a number or letter included in the vehicle registration, the State name on the plate, or a number or month on the registration renewal sticker on the plate, is made illegible. Partial covering of the items is legal if the information can still be read.

Amends G.S. 20-130.1 by adding to the list of vehicles that may operate red lights pursuant to G.S. 20-130.1, “an Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.”

Amends G.S. 20-157(f), the “move-over law,” by expanding the definition of “public service vehicles” to now include a vehicle being used to restore electric utility service due to an unplanned event.

Amends 20-161(a) to prohibit leaving a vehicle on the main traveled portion of a highway or highway bridge (used to read “paved” portion) unless the vehicle is disabled. The amendment also deletes the limitation that the vehicle be outside municipal limits, but adds a requirement that the highway or highway bridge have a posted speed limit of less than 45 mph. For highways or highway bridges with a speed limit of 45 mph or greater, see new G.S. 20-161(a1) below.

Creates new G.S. 20-161(a1) to prohibit leaving a vehicle unattended on the paved or main traveled portion of a highway or highway bridge with a posted speed limit of 45 mph or greater unless the vehicle is disabled.

Amends G.S. 20-161(b) to delete the language limiting its application to areas outside municipal corporate limits. The statute now prohibits parking or standing a vehicle on the shoulder of a public highway, both inside and outside City limits, unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

Effective: December 1, 2010

Session Law 2010-134

Senate Bill 1136

Towing From Private Lots

Amends G.S. 20-219.2 so that in order to make it unlawful to park in a privately owned or leased space and to consequently tow from such spaces, there must be a sign, no smaller than 24" x 24" displaying the name and telephone number of the towing and storage company, and if the individual spaces are owned or leased, the name of the owner or lessee. If there is a place of storage within 15 miles, the towed vehicle must be stored no more than 15 miles away. If not, then the towed vehicle may be stored no more than 25 miles away.

An owner must be informed in writing at the time of retrieval of the vehicle that he or she has the right to pay the amount of the lien asserted, request immediate possession, and contest the lien for towing charges pursuant to the provisions of G.S. 44A-4. Any person who tows or stores a vehicle subject to this section shall not require any person retrieving a vehicle to sign any waiver of rights or other similar document as a condition of the release of the person's vehicle, other than a form acknowledging the release and receipt of the vehicle.

Violation of the above provisions is changed from a Class 3 misdemeanor to an infraction with a maximum penalty of \$100 within the discretion of the court.

Effective: October 1, 2010

**Session Law 2010-135
House Bill 1812**

Pretrial Release For Crimes of Domestic Violence

G.S. 15A-534.1 is amended to provide that in all cases in which a defendant is charged with assault on, stalking, communicating a threat to, or committing a felony pursuant to Chapter 14, Articles 7A (Rape and Other Sex Offenses), 8 (Assaults), 10 (Kidnapping and Abduction), or 15 (Arson and Other Burnings) of the North Carolina General Statutes, upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with a violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the North Carolina General Statutes, the judge determining the conditions of pretrial release shall direct a law enforcement officer or a district attorney to provide the defendant's criminal history, and the judge shall consider that criminal history when setting conditions of release.

Effective: October 1, 2010

**Session Law 2010-159
House Bill 1682**

Corporal Punishment of Student with a Disability Prohibited

Amends G.S. 115C-391 to prohibit corporal punishment of a student with a disability, as defined in G.S. 115C-106.3(1) or section 504 of the federal Rehabilitation Act of 1973, if the student's parent or guardian has stated in writing that corporal punishment should not be administered.

Note: Consequently, corporal punishment on such a student may constitute an assault under North Carolina criminal law.

Effective: beginning of 2010-2011 school year

Session Law 2010-169

House Bill 961

Amends G.S. 160A-168 making the following information a public record with respect to each City employee: the date and amount of each increase or decrease in salary; the date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification; the date and general description of the reasons for each promotion; the date and type of each dismissal, suspension or demotion taken for disciplinary reasons; and for each disciplinary action which was a dismissal, a copy of the written notice of the final decision of the municipality setting forth the specific acts or omissions that are the basis of the dismissal.

Effective: October 1, 2010