



# Police Law Bulletin



City Attorneys' Office

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## 2014 Legislation Affecting Criminal Law and Procedure



Below are brief summaries, based upon synopses by Robert Farb, of selected legislation affecting criminal law and procedure that were enacted during the 2014 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); click on Go in the Find a Bill box at the top of the page; insert the bill number, for example s912 or h2098; click the Look Up box; then click on the title of the bill located at the top of the screen.

### House Bill 1050 Session Law 2014-3

#### **Controlled Substances Excise Tax Change; Vapor Products Regulated in Prisons and Jails**

This lengthy session law amended various revenue laws and included a few changes affecting criminal law.

Section 14.25 amends G.S. 105-113.107(a) (controlled substances excise tax) to add an excise tax at the rate of \$50.00 for each gram, or fraction thereof, of any "low-street-value drug" (defined in G.S. 105-113.106(4d)) that is sold by weight.

*Effective: May 29, 2014*

Section 14.27 rewrites G.S. 14-344.1(a)(3) concerning the sales and use tax requirements when reselling admission tickets on the Internet.

*Effective: December 1, 2014*

Section 15.2 amends G.S. 148-23.1 to prohibit the possession or use of "vapor products" (defined in amended G.S. 148-23.1(d) to include electronic cigarettes, cigars, etc.) at a state correctional facility. The sanctions for violations of G.S. 148-23.1 remain as disciplinary actions against inmates or employees or loss of visitation privileges of visitors as specified in the statute.

*Effective: July 1, 2014*

Section 15.2 amends G.S. 14-258.1(c) and (e) to prohibit the sale or delivery of vapor products to an inmate in a prison or jail and to prohibit a jail inmate from possessing vapor products. A violation of G.S. 14-258.1(c) or (e) remains a Class 1 misdemeanor.

*Effective: December 1, 2014*

**House Bill 777**  
**Session Law 2014-21**

**Sex Offender Prohibited From Residing Within 1,000 Feet of Boys and Girls Clubs of America**

This session law amends the definition of “child care center” in G.S. 14-208.16(b) to prohibit a registered sex offender or a person who is required to register from residing within 1,000 feet of a permanent location of an organized club of Boys and Girls Clubs of America. However, the session law does not apply to a person who has established a residence before June 24, 2014, in accordance with G.S. 14-208.16(d)(1), (2), or (3).

*Effective: June 19, 2014*

**House Bill 698**  
**Session Law 2014-27**

**Urban Search and Rescue Program Created**

This session law adds new Article 6 to G.S. Chapter 166A, to create a statewide urban search and rescue program to be maintained by the Division of Emergency Management of the State Department of Public Safety. The program will provide, among other things, for an urban search and rescue team to assist in the removal of trapped victims during emergencies, including collapsed structures, trench excavations, elevated locations, and in other technical rescue situations. The program must include contract response teams located strategically across the state that are available to provide 24-hour dispatch from the Division of Emergency Management Operations Center. The Secretary of Public Safety may contract with local government units to provide contract response teams to implement the program. Before implementation of the program, the department must study its costs, including the apportionment of costs between State and local government entities, and a report of the results of the study must be provided to a designated legislative committee and the Fiscal Research Division by January 15, 2015.

*Effective: July 1, 2014*

**House Bill 1025**  
**Session Law 2014-58**

**Ramp Meter Violation Created**

This session law contains several changes involving the state Department of Transportation. Of direct relevance to criminal law, section 10 amends G.S. 20-4.01 to define “ramp meter” as a traffic control device that consists of a circular red and circular green display placed at a point along an interchange entrance ramp. New G.S. 20-158(c)(6) provides that when a ramp meter is displaying a circular red display, vehicles facing the red light must stop. When displaying green, a vehicle may proceed for each lane of traffic facing the meter. When the display is dark or not red or green, a vehicle may proceed without stopping. A violation of the subdivision is an infraction without assessment of driver’s license points or insurance surcharge.

*Effective: December 1, 2014*

**Senate Bill 744**  
**Session Law 2014-100**

**Appropriations Act**

This session law makes base budget appropriations for current operations and other changes. The section numbers and pages of the session law are noted to facilitate locating the provisions.

*Alcohol Beverage Control (ABC) Commission.* Section 15.2A of the Appropriations Act (page 137) transfers the ABC Commission from the Department of Commerce to the Department of Public Safety, but the Commission will exercise its powers independently of the Secretary of Public Safety.

Section 15.2A1 (page 137) amended G.S. 18B-904 to require the ABC Commission to immediately suspend permits issued by it for 30 days if (1) ALE agents or local ABC Board officers provide advance notice to the commission's legal division staff of an ongoing undercover operation; and (2) after executing a search warrant resulting from the undercover operation, five or more people are criminally charged with violations of gambling, disorderly conduct, prostitution, controlled substance, or felony counterfeit trademark laws.

*Effective: October 1, 2014*

*All misdemeanants to serve sentences in local confinement facilities.* Section 16C.1 of the Act (pages 155-59) amends various statutes to remove all misdemeanants, including impaired driver (DWI) defendants, from the state prison system. All misdemeanor sentences in excess of 90 days and all DWI sentences, regardless of length, are served through the State Misdemeanor Confinement Program. Amended G.S. 15A-1351(a) provides that all terms of special probation imposed at sentencing for misdemeanors, including impaired driving, must be served in a local confinement or treatment facility, not in prison.

*Effective: October 1, 2014* applies to (1) defendants placed on probation or sentenced to imprisonment for impaired driving under G.S. 20-138.1 on or after January 1, 2015; and (2) defendants placed on probation or sentenced to imprisonment for all other misdemeanors other than impaired driving under G.S. 20-138.1 on or after October 1, 2014.

*Reorganization of State Bureau of Investigation (SBI), Division of Criminal Information, and Alcohol Law Enforcement Section.* Section 17.1 of the Appropriations Act (pages 164-83) transfers the Division of Criminal Information from the Department of Justice to the Department of Public Safety. The remainder of the State Bureau of Investigation is transferred from the Department of Justice as a new section within the Law Enforcement Division of the Department of Public Safety. However, the SBI will be an independent agency under the direction and supervision of the SBI Director, who will be appointed for an eight-year term by the Governor subject to confirmation by the General Assembly. The Alcohol Law Enforcement Section is relocated as a branch (Alcohol Law Enforcement Branch) under the SBI, but the branch will be separate and discrete. Amended G.S. 18B-500(b) provides that an alcohol law enforcement agent's primary responsibility is the enforcement of ABC and lottery laws, deleting both the Controlled Substances Act and any duty assigned by the Secretary of Public Safety or the Governor.

*Effective: July 1, 2014*

*Court costs assessed for private hospital performing toxicological testing for prosecutorial district as well as expert witness fees.* Section 18B.14 of the Appropriations Act (pages 191-93) amends G.S. 7A-304(a) to create two new court cost provisions for convicted defendants under specified circumstances:

(1) for a private hospital performing toxicological testing (bodily fluids for the presence of alcohol or controlled substances) under contract with a prosecutorial district, the sum of \$600 is to be remitted to the State Treasurer for the General Court of Justice; and (2) for an expert witness employed by a private hospital performing toxicological testing under contract with a prosecutorial district who completes a chemical analysis under G.S. 20-139.1 and testifies at trial, the sum of \$600 is to be remitted to the State Treasurer for the General Court of Justice.

*Effective: December 1, 2014*

*Remote driver's license renewal.* Section 34.8 of the Appropriations Act (pages 213-14) amends G.S. 20-7(f) authorizes the DMV to offer remote renewal of a driver's license by mail, telephone, electronic device, or secure means as specified in the new statutory provision.

*Effective: July 1, 2014*

*Regulation of unmanned aircraft systems (commonly known as drones).* Section 34.30 of the Appropriations Act (pages 227-31) created new G.S. 15A-300.1 and -300.2 prohibiting the use of an "unmanned aircraft" (defined as an aircraft operated without the possibility of human intervention from within or on the aircraft and is not a model aircraft) system to: (1) conduct surveillance of a person, an occupied dwelling, or private real property without consent; or (2) photograph a person without consent for the purpose of publishing or otherwise publicly disseminating the photograph. There are five law enforcement exceptions: (i) to counter a high risk of a terrorist attack, (ii) to conduct surveillance within an officer's plain view when the officer has a legal right to be at the location, (iii) execute a search warrant authorizing the use of unmanned aircraft system, (iv) having reasonable suspicion of specified imminent circumstances, and (v) photograph gatherings where the general public is invited. A civil remedy is authorized for statutory violations. Evidence obtained in violation of the statute is inadmissible in a criminal prosecution except when obtained under an objectively reasonable, good-faith belief that the actions were lawful. An unmanned aircraft system may not be launched or recovered from any state or private property without consent. A local government may adopt an ordinance to regulate the use of a local government's property for the launch or recovery of an unmanned aircraft system.

*Effective: October 1, 2014*

New G.S. 14-7.45 provides that all crimes committed by use of an unmanned aircraft system while in flight over the state shall be governed by state laws, which will determine whether the conduct of the unmanned aircraft system while in flight over the state constitutes a crime by the owner. New G.S. 14-280.3 provides that a person who interferes with a manned aircraft by an unmanned aircraft system is guilty of a Class H felony. New G.S. 14-401.24 provides that a person who (1) possesses or uses an unmanned aircraft or aircraft system with an attached weapon is guilty of a Class E felony, or (2) fishes or hunts using an unmanned aircraft system is guilty of a Class 1 misdemeanor. New G.S. 14-401.25 provides that the unlawful distribution of images taken by an unmanned aircraft system is a Class A1 misdemeanor. Amended G.S. 113-295 provides that the unlawful interference under subsection (a) of the statute with a person taking wildlife resources by the use of an unmanned aircraft system is a Class 1 misdemeanor.

*Effective: December 1, 2014*

New Article 10 (G.S. 63-95 and -96) of G.S. Chapter 63 prescribes the training (including a knowledge and skills test) required to operate an unmanned aircraft system and the license required for the commercial operation of such a system.

Section 7.16 (page 26) effectively extends the ban on the procurement or operation of an unmanned aircraft system by a state or local government until December 31, 2015, unless the Office of the State Chief Information Officer approves an exception.

**House Bill 366**  
**Session Law 2014-103**

**Trespass Law Changes**

Amends G.S. 14-159.12 (first-degree trespass) by adding to the Class A1 misdemeanor in subsection (c) a trespass on the premises of any facility used or operated for agricultural activities as defined in G.S. 106-581.1. Amends G.S. 14-159.3 (trespass to land on motorized all-terrain vehicle) to (1) require that the owner's consent to allow a person to use the vehicle must be in writing; and (2) provide that a landowner who gives a person written consent to operate an all-terrain vehicle on his or her property owes the person the same duty of care that he or she owes a trespasser.

*Effective: December 1, 2014.*

**House Bill 1145**  
**Session Law 2014-114**

**Mopeds Required To Be Registered with Division of Motor Vehicles (DMV)**

New G.S. 20-53.4 provides that mopeds must be registered with the DMV, and the moped owner must pay the same base fee and be issued the same type of registration card and plate as for a motorcycle. To be registered and to operate on a highway or public vehicular area (PVA), (1) a moped must have a manufacturer's certificate of origin; and (2) the moped must be designed and manufactured for use on highways and PVAs. Amended G.S. 20-76 sets out procedures when an applicant for registration of a moped is unable to present a manufacturer's certificate of origin. Effective August 6, 2014, the Joint Legislative Transportation Oversight Committee must study whether additional statutory changes are needed to ensure a moped's safe operation, including whether insurance should be required. The committee must report to the 2015 legislative session.

*Effective: July 1, 2015*

**House Bill 1133**  
**Session Law 2014-115**

**Miscellaneous Criminal Law Changes**

This session law makes miscellaneous changes to a variety of statutes, including criminal provisions. The section numbers and pages of the session law are noted to facilitate locating the provisions.

Amends G.S. 15A-830(a)(7), involving the Crime Victims' Rights Act, revising the list of offenses included within the act to reflect reclassifications and repeals, and specifically states that the changes do not adversely affect the rights granted to victims before these changes become effective. Section 2.1 (pages 2-3).

A clerk of superior court's reporting duties under G.S. 14-404(c1) to the National Instant Criminal Background Check System (NICS) involving pistol permits issued by sheriffs are delayed from beginning on July 1, 2014, to January 1, 2015, and clarifies that the clerk must determine which information can "practicably be transmitted" to NICS. Section 23.5 (pages 13-14).

Amends G.S. 15-11.1(b1)(4) to allow a court order transferring a seized firearm to a law enforcement agency to be issued without a written request of the head of the agency. Section 24.5 (page 14).

Amends G.S. 20-4.01(41a) to include within the definition of a “serious traffic violation” the unlawful use of a mobile telephone while operating a commercial motor vehicle. Section 28.3 (pages 18-19).

Amends G.S. 20-37.13 to provide that the issuance of a commercial driver’s learner’s permit is a precondition to the initial issuance of a commercial driver’s license and also a precondition to the upgrade of a commercial driver’s license if the upgrade requires a skills test. Section 28.5 (page 19).

*Effective: August 11, 2014*

**House Bill 369**  
**Session Law 2014-119**

**Miscellaneous Criminal Law Changes**

This session law makes miscellaneous changes to a variety of statutes affecting criminal law.

*Reduced punishment if defendant possesses marijuana paraphernalia.* New G.S. 90-113.22A creates the Class 3 misdemeanor of possession of marijuana paraphernalia, and marijuana is removed from the current Class 1 misdemeanor of possession of drug paraphernalia in G.S. 90-113.22. Also, the new Class 3 misdemeanor is made a lesser-included offense of the Class 1 misdemeanor.

*Cell phone offenses in prisons or jails.* Amended G.S. 14-258.1: (1) increases the punishment from a Class 1 misdemeanor to a Class H felony under subsection (d) for giving or selling a cell phone or other device to a state prisoner or local confinement facility inmate; and (2) provides that a state prisoner or local confinement facility inmate who possesses a cell phone or other device commits a Class H felony.

*Broaden scope of assault on or threat against legislative, executive, or court officials.* The criminal statutes (G.S. 14-16.6 and 14-16.7) punishing assaults on and threats against legislative, executive, and court officials are broadened to include an assault or threat on another person as retaliation against these officials.

*Detention officers authorized to carry weapons on educational property.* Amended G.S. 14-269.2 (weapons on campus or other educational property), authorizes detention officers employed by and authorized by the sheriff to carry firearms on campus or educational property when discharging official duties.

*Punishments for carrying concealed weapon.* Amended G.S. 14-269(c), makes the following changes: (1) the punishment for a second or subsequent offense for a violation of G.S. 14-269(a1) (carrying concealed gun when not otherwise permitted to do so) is increased from a Class I felony to a Class H felony; and (2) provides that a violation of G.S. 14-269(a1) that is punishable under G.S. 14-415.21(a) (infraction for person with concealed handgun permit to carry concealed handgun without permit in one’s possession or fails to disclose to officer that person holds permit and is carrying a concealed handgun) is not punishable under G.S. 14-269.

*Effective: December 1, 2014*

**Senate Bill 734**  
**Session Law 2014-120**

**Miscellaneous Criminal Law Changes** This 40-page session law makes miscellaneous changes to a variety of statutes, including the following criminal provisions found in Section 52 (pages 36-37) of the bill.

*Felony taking of Venus flytrap; taking certain wild plants from another's land.* New G.S. 14-129.3 provides that the unlawful taking of any Venus flytrap is a Class H felony. Amended G.S. 14-129 increases the Class 3 misdemeanor punishment for taking certain wild plants from another's land from a minimum fine of \$10 to \$75 and from a maximum fine of \$50 to \$175, and specifies that each plant taken constitutes a separate offense. The exemption of various counties from the provisions of this statute is deleted. The clerk of superior where a conviction occurs that involves any species that also appears in the North Carolina Protected Plants list created under Article 19B of G.S. Chapter 106 must report the conviction to the Plant Conservation Board, which may consider a civil penalty.

*Effective: December 1, 2014*