



Police Law Bulletin



City Attorneys' Office

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2015 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 2015 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; 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.

Session Law 2015-5 Senate Bill 78

State Correctional Officers May Carry Concealed Off-Duty

This bill amended G.S. §14-269(b) by adding a provision that allows State correctional officers to carry a concealed firearm off-duty except while consuming alcohol or an unlawful controlled substance, or while alcohol or an unlawful controlled substance remains in the officer's body.

Effective: December 1, 2015

Session Law 2015-16 House Bill 91

Study Misuse of Handicapped Windshield Placards

The Division of Motor Vehicles is required to study ways to decrease the misuse of handicapped windshield placards. The study must include the cost, feasibility, and advisability of (1) requiring the inclusion of more personal identifying information on the placard, including the handicapped person's picture; (2) linking the placard to the handicapped person's driver's license or identification card; and (3) linking the placard to a license plate. The DMV must report its findings and recommendations to the Joint Legislative Transportation Oversight Committee by January 15, 2016.

Effective: May 14, 2015

Session Law 2015-18 House Bill 601

Allow Lawful Sale of Deer Skins

Amended G.S. 113-291.3(b) allows the skin of deer lawfully taken by hunting to be possessed, transported, bought, or sold, subject to tagging and reporting requirements and any season limits set by the Wildlife Resources Commission.

Effective: October 1, 2015

Session Law 2015-25 House Bill 79

Clarify Contempt Remedy For Violation of Civil No-Contact Order

Amended G.S. 50C-10 provides that a knowing violation of a civil no-contact order (which involves stalking or nonconsensual sexual conduct) is punishable by civil or criminal contempt under Chapter 5A of the General Statutes. The current statute simply states that a violation is punishable as contempt of court.

Effective: October 1, 2015

Session Law 2015-26 House Bill 102

Law Enforcement Officers, Emergency Personnel and Municipal and County Employees Authorized to Operate Utility Vehicles on Certain Public Highways; Refuse, Solid Waste, and Recycling Vehicles Included in Move-Over Law

G.S. 20-4.01(48c) defines a “utility vehicle” as a motor vehicle designed for off-road use and used for general maintenance, security, agricultural, or horticultural purposes. It does not include an all-terrain vehicle, golf cart or riding lawn mower. Amended G.S. 20-171.23 allows law enforcement, fire, rescue and emergency medical personnel to operate agency-owned utility vehicles, as well as all-terrain vehicles defined in G.S. 14-159.3, on a highway under certain conditions.

Effective: May 21, 2015

Amended G.S. 20-157(f), commonly known as the move-over law applicable when there is an emergency vehicle parked or standing within 12 feet of the roadway and giving a warning signal, to include a vehicle that is being used for collection of refuse, solid waste, or recycling.

Effective: October 1, 2015.

Session Law 2015-31 Senate Bill 90

Motor Vehicles Must Have At Least One Brake Light on Each Side of Rear of Vehicle

Amended G.S. 20-129(g) and G.S. 20-129.1 clarify that motor vehicles (other than a motorcycle, which only needs one stop lamp) must be equipped with stop lamps, commonly known as brake lights, one on each side of the rear of the vehicle. This session law effectively overrules *State v. Heien*, 214 N.C. App. 515 (2011), which ruled that G.S. 20-129(g) only requires one stop lamp.

Effective: October 1, 2015

Session Law 2015-32

House Bill 659

Adds Types of Prior Convictions For Class H Felony Offense of Possessing Pseudoephedrine

Amended G.S. 90-95(d1)(1)c makes it a Class H felony to possess a pseudoephedrine product when the person has a prior conviction for possession with intent to sell or deliver methamphetamine, sell or deliver methamphetamine, trafficking methamphetamine, and possession of an immediate precursor chemical (current law only includes prior convictions of possession or manufacture of methamphetamine). Additional precursor chemicals are added to the list set out in G.S. 90-95(d2). And, the Joint Legislative Commission on Justice and Public Safety is authorized to study the current state and federal law regarding the authority of state agencies to schedule controlled substances without legislative action and the procedure to schedule or reschedule.

Effective: December 1, 2015

Session Law 2015-36

Senate Bill 445

New Provisions to Protect Clients of Facilities Providing Care, Treatment, Habilitation, or Rehabilitation of People With Mental Illness, Developmental Disabilities, or Substance Abuse Disorders

Amended G.S. 122C-66(a) increases the punishment for an employee or volunteer at a facility who knowingly causes pain or injury to a client, other than as a part of a generally accepted medical or therapeutic procedure, from a Class 1 misdemeanor to a Class A1 misdemeanor. New G.S. 122C-66(a1) provides that an employee or volunteer at a facility who borrows or takes personal property from a client commits a Class 1 misdemeanor. Amended G.S. 122C-66(b) increases the punishment from a Class 3 misdemeanor to a Class 1 misdemeanor when an employee or volunteer at a facility witnesses or knows of a violation of subsections (a) or (a1) of G.S. 122C-66 or an accidental injury to a client and fails to report it to authorized personnel designated by the facility. New G.S. 122C-66(b1) provides that an employee or volunteer at a facility who witnesses a client become a victim of a violation of Article 7A (rape and other sex offenses) or Article 26 (offenses against public morality and decency) of Chapter 14 must report the violation within 24 hours to the county department of social services, the district attorney, or local law enforcement agency. A failure to report is a Class A1 misdemeanor.

Effective: December 1, 2015

Session Law 2015-43

House Bill 82

Court May Authorize Officer, When Executing a Nonsecure Custody Order Alleging Abuse, Neglect, and Dependency, To Make Forcible Entry Into Private Property

Amended G.S. 7B-504 allows a court—if it finds based on a petition alleging abuse, neglect, or dependency or the petitioner's testimony that a less intrusive remedy is unavailable—to authorize a law enforcement officer to enter private property to take physical custody of the juvenile. If required by exigent circumstances, the court may authorize an officer to make a forcible entry at any hour.

Effective: June 2, 2015

Session Law 2015-44
House Bill 113

Punishment Increased for Sex Offenses Committed Against a Student by School Personnel (Other Than Teachers and Certain Specified Others)

G.S. 14-27.7(b) makes it a criminal offense for school personnel (other than a teacher, school administrator, student teacher, school safety officer, or coach) who is less than four years older than the victim to engage in vaginal intercourse or a sexual act with a student. The amended statute increases the punishment for this offense from a Class A1 misdemeanor to a Class I felony. G.S. 14-202.4(b) makes it a criminal offense for school personnel (other than a teacher, school administrator, student teacher, school safety officer, or coach) who is less than four years older than the victim, to take indecent liberties with student. The amended statute increases the punishment from a Class A1 misdemeanor to a Class I felony. G.S. 14-202.4(d) is amended so that the definition of “school personnel” includes persons employed by a nonpublic, charter, or regional school.

Amended G.S. 14-208.15 (sex offender registration), provides that on request of an institution of higher education, the sheriff of the county in which the institution is located must provide registry information for any registrant who has stated he or she is a student or employee or expects to become one.

Effective: December 1, 2015

Session Law 2015-47
House Bill 294

Criminal Offense to Provide Cell Phone to Delinquent Juvenile in Custody of Department of Public Safety

Amended G.S. 14-258.1, provides that it is a Class H felony to knowingly give or sell a cell phone or other wireless communications device to a delinquent juvenile in the custody of the Division of Juvenile Justice of the Department of Public Safety. The offense applies to a juvenile confined in a youth development center or detention facility and also applies when the juvenile is transported to or from confinement.

Effective: December 1, 2015

Session Law 2015-48
House Bill 570

Identification of Outstanding Arrest Warrants

Amended G.S. 15A-301.1 provides that when a person is taken into custody, the custodial law enforcement agency must attempt to identify all outstanding warrants and notify appropriate law enforcement agencies of the person’s location. The same duty is imposed on a court before entering any court order in a criminal case. Newly-enacted G.S. 148-10.5 requires the Division of Adult Correction of the Department of Public Safety to work with law enforcement, district attorneys’ offices, and courts to develop a process at intake and before release to identify all outstanding warrants for an inmate and to

resolve them while he or she is in custody, if feasible. The inmate must be notified of the outstanding warrant and any right to counsel.

Effective: October 1, 2015

Session Law 2015-49 House Bill 595

Certification of Former or Current Military Police Officers as Law Enforcement Officers

Newly-enacted G.S. 17C-10.1 provides that the North Carolina Criminal Justice Education and Training Standards Commission shall waive completion of the Commission-accredited training course for law enforcement certification to a current or honorably discharged former military police officer upon determining that the applicant's combined training and experience is substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer and that the applicant satisfies all of the following conditions: 1) successfully completed a military police training program and been awarded a military police occupational specialty rating; 2) performed military police officer duties in any of the military branches, active or reserve, or the National Guard for not less than 2 of the 5 years preceding application; and 3) meets the minimum standards for law enforcement officers set out in 12 NCAC 9B.0101 and 12 NCAC 9B.0111. An applicant certified pursuant to the foregoing must successfully complete the employing agency's in-service firearms training prior to employment and shall serve a 1-year period of probation. During the probationary period, the applicant must complete the Legal Unit and 24 hours of training in the service of civil process in an accredited BLET course, and successfully pass the State Exam. The Commission shall issue certification to a current or honorably discharged former military police officer whose combined training and experience is *not* substantially equivalent to or does *not* exceed the minimum expectations for employment as a law enforcement officer if the applicant meets all of the following requirements: 1) successfully completed a formal military basic training program and been awarded a military police occupational specialty rating; 2) engaged in the active practice of military police officer duties in any of the military branches, active or reserve, or the National Guard for not less than 2 of the 5 years preceding application; 3) meets the minimum standards for law enforcement officers set out in 12 NCAC 9B.0101 and 12 NCAC 9B.0111; 4) successfully completes the Legal Unit and 24 hours of training in the service of civil process in an accredited BLET course; 5) successfully completes high-liability training as deemed necessary by the Commission; and 6) passes the State Exam. Amended G.S. 17C-3 adds three additional members to the Commission: (1) the Director of the State Bureau of Investigation; (2) the Commander of the State Highway Patrol; and (3) a juvenile justice officer employed by the Juvenile Justice Section, to be appointed by the Governor.

Effective: June 3, 2015.

Session Law 2015-58 House Bill 879

Changes to Juvenile Code

This Act made various changes to the juvenile code, most of which impact the role and responsibilities of the court, defense and prosecuting attorneys, and juvenile court counselors. The two portions of the Act which may directly affect law enforcement are:

Age Change for Custodial Interrogation. Amended G.S. 7B-2101(b) provides that an in-custody admission or confession resulting from the interrogation of a juvenile who is less than 16 (currently the

age is less than 14) may not be admitted into evidence unless it was made in the presence of the juvenile's parent, guardian, custodian, or attorney.

Secure Custody Changes. Amended G.S. 7B-1903 provides that as long as the juvenile remains in secure custody, further hearings on continued secure custody must be held at intervals of no more than 10 calendar days, but may be waived for no more than 30 calendar days only with the consent of the juvenile through the juvenile's counsel. The order for continued secure custody must be in writing with appropriate findings of fact. The statute is also amended to provide that if the court finds there is a need for an evaluation of a juvenile for medical or psychiatric treatment under subsection (b) of the statute and the juvenile is under 10 years old and does not have a pending delinquency charge, the law enforcement officer or other authorized person assuming custody of the juvenile may not use physical restraints during the transport of the juvenile to the designated place set out in the order, unless in the officer's or other authorized person's discretion the restraints are reasonably necessary for safety reasons.

Effective: December 1, 2015

Session Law 2015-62 House Bill 465

Women and Children's Protection Act

Statutory Rape or Sexual Offense Changes. Amended G.S. 14-27.7A (statutory rape or sexual offense) changes the age of the victim from 13, 14, or 15 years old to 15 years old or younger. Subsection (b) is further amended making it, the Class C felony offense, applicable unless the conduct is covered under some other provision of law providing greater punishment.

Effective: December 1, 2015

Electronic Filing for 50B Domestic Violence Protective Orders and 50C Civil No-Contact Orders.

New G.S. 7A-343.6 authorizes the Administrative Office of the Courts (AOC) to develop a program in district court for electronic filing in Chapters 50B and 50C cases. To implement the program, each chief district court judge must draft local rules and submit them to the AOC for approval. The local rules must permit the clerk of superior court to accept electronically-filed complaints requesting domestic violence protective orders under Chapter 50B or civil no-contact orders under Chapter 50C that are transmitted from a domestic violence program as defined in G.S. 8-53.12.

Effective: June 5, 2015

Amended G.S. 50B-2 provides that all documents filed, issued, registered, or served in an action under Chapter 50B concerning an ex parte, emergency, or permanent domestic violence protective orders may be filed electronically. Hearings held to consider ex parte relief under G.S. 50B-2(c) may be held via video conference, but hearings held to consider emergency or permanent relief under G.S. 50B-2(a) or (b) shall not be held via video conference. Similar changes are made to Chapter 50C.

Effective: December 1, 2015

New Non-Capital Sentencing Aggravating Factor. Amended G.S. 15A-1340.16(d) adds a new non-capital sentencing aggravating factor when the defendant committed an offense and knew or reasonably should have known that a person under the age of 18 (who was not involved in the commission of the offense) was in a position to see or to hear the offense.

Effective: December 1, 2015

Meaning of “In the Presence of a Minor” Expanded for Purposes of Assault Charge. Amended G.S. 14-33(b) (assault on person with whom defendant has personal relationship) expands the definition of the phrase “in the presence of a minor” to include a minor who was in a position to hear as well as see the assault.

Effective: December 1, 2015

Domestic Violence Cases Subject to Special Bail and Pretrial Release Conditions Expanded.

Amended G.S. 15A-534.1 adds to the domestic violence cases subject to special bail and pretrial release conditions those in which the victim of the enumerated crimes is a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).

Effective: December 1, 2015

Expanded Applicability of Offense Involving Sex Offender Unlawfully on Premises. Amended G.S. 14-208.18(c)(1) expands the applicability of the crime involving a sex offender being unlawfully on premises to those persons required to register as a sex offender for any federal offense or offense committed in another state, which if committed in North Carolina, is substantially similar to an offense in Article 7A (rape and other sex offenses) of Chapter 14.

Effective: December 1, 2015

**Session Law 2015-72
House Bill 552**

New Offense of Graffiti Vandalism

Newly enacted G.S. 14-127.1 creates the offense of graffiti vandalism, which is defined as the unlawful writing or scribbling on, painting, defacing, etc., the walls of (1) any real property, public or private; (2) any public building or facility as defined in G.S. 14-132; or (3) any statue or monument situated in any public place. A person convicted of this offense is guilty of a Class 1 misdemeanor and shall be fined a minimum of \$500 and, if community or intermediate punishment is imposed, shall be required to perform 24 hours of community service. It is a Class H felony if the defendant commits graffiti vandalism and has two or more prior graffiti vandalism convictions, if the current violation was committed after the second conviction, and the violation resulting in the second conviction was committed after the first conviction. Amended G.S. 14-132 (disorderly conduct and injuries to public buildings and facilities) adds a provision in subsection (d) that it is a Class 2 misdemeanor unless the conduct is covered under some other provision of law providing greater punishment.

Effective: December 1, 2015

**Session Law 2015-74
House Bill 691**

Felony to Assault North Carolina National Guard Discharging Official Duties

Newly enacted G.S. 14-34.7(a1) provides that unless covered under another provision of law providing greater punishment, it is a Class F felony to assault a member of the North Carolina National Guard

(NCNG) while he or she is discharging or attempting to discharge official duties and inflict serious bodily injury. Amended G.S. 14-34.7(c) provides that it is a Class I felony to assault a NCNG member while he or she is discharging or attempting to discharge official duties and inflict physical injury. Amended G.S. 14-34.5 provides that it is a Class E felony to assault with a firearm a NCNG member while he or she is performing official duties.

Effective: December 1, 2015

Session Law 2015-87
Senate Bill 83

Filing False Lien Against Property of Public Officer or Employee

New subsection (b1) is added to G.S. 14-118.6 (filing false lien or encumbrance against public officer or employee's property) to provide that when a lien or encumbrance (hereafter, lien) as described in subsection (a) is presented to the clerk of superior court for filing and the clerk has a reasonable suspicion that it is false, the clerk may refuse to file the lien. Neither the clerk nor the clerk's staff are liable for filing or refusing to file a lien. The clerk must not file, index, or docket the document against the property of a public officer or employee until that document is approved for filing by any judge of the judicial district having subject matter jurisdiction. The procedure for judicial review and court orders are set out in this new subsection.

Effective: October 1, 2015

Session Law 2015-91
Senate Bill 60

Permanent Civil No-Contact Order Against Sex Offender

Creates new Chapter 50D authorizing the victim (or adult representative if the victim is a minor or incompetent) of a sex offense that occurred in the state to bring a civil action in district court to obtain a permanent civil no-contact order against the person who committed the sex offense. Sex offenses for purposes of this Chapter are defined as any criminal offense that requires sex offender registration under Article 27A of Chapter 14. The permanent no-contact order is an injunction for the lifetime of the offender that prohibits any contact by the offender with the victim of the sex offense for which the offender has been convicted. This new law sets out the required court findings before issuance of the permanent no-contact order and types of relief that the court may grant, all related to no contact with the victim.

A person who knowingly violates this type of court order is guilty of a Class A1 misdemeanor. A law enforcement officer **must** arrest a person, with or with a warrant or other process, if the officer has probable cause that the person knowingly has violated a permanent civil non-contact order issued pursuant to this Chapter. In addition, the victim may file a motion for contempt for a violation of the order. Records of an action filed under the law must be retained by the clerk of superior court.

Effective: October 1, 2015

Session Law 2015-94
Senate Bill 154

Immunity Provisions for Drug and Alcohol Related Overdoses

G.S. 90-96.2 is amended to provide that a person may not be prosecuted for certain drug offenses if: 1) the person sought medical assistance for another person experiencing a drug-related overdose by contacting 911, a law enforcement officer, or emergency medical services personnel; 2) the person acted in good faith when seeking medical assistance and reasonably believed that he or she was the first to call for assistance; 3) the person provided his or her own name to 911 or to an officer on arrival; 4) the person did not seek medical assistance during the course of the execution of an arrest warrant or search warrant, or other lawful search; and 5) the evidence for prosecution of the offense was obtained as a result of the person seeking medical assistance for the drug-related overdose. Immunity also is extended to the overdose victim if all but item 3) above are satisfied. A person is not subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on the offense for which the person has immunity from prosecution. A law enforcement officer is not subject to civil liability when he or she in good faith arrests or charges a person later determined to be entitled to immunity under the statute. The offenses to which this limited immunity applies has not changed and continues to include: a misdemeanor violation of G.S. 90-95(a)(3); a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine or heroin; or a violation of G.S. 90-113.22. G.S. 90-106.2 is amended to provide that a pharmacist may dispense an opioid antagonist to a person with an opiate-related overdose pursuant to a prescription issued under the conditions set out in subsection (b) of the statute, and the pharmacist is immune from civil or criminal liability for any such authorized action. G.S. 18B-302.2 is amended making similar changes to the immunity offered for alcohol related overdose treatment.

Effective: August 1, 2015

Session Law 2015-97 House Bill 560

Felony to Assault Hospital Personnel and Healthcare Providers

Amends G.S. 14-34.6(a)(3) to provide that it is a Class I felony to assault and cause physical injury to hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital. Previously, the statute defined these victims as only physicians, physician assistants, nurses, and licensed nurse practitioners.

Effective: December 1, 2015

Session Law 2015-98 House Bill 909

Changes to Alcohol Beverage Control Commission Laws

The sale of antique spirituous liquor is authorized and regulated effective on the adoption (which must occur no later than September 1, 2015) of temporary rules by the ABC Commission.

Amends G.S.18B-102 making it a Class 1 misdemeanor when a person manufactures, sells, transports, consumes, possesses, etc., powdered alcohol, which is defined in amended G.S. 18B-101.

Distillery permit holders are authorized to sell spirituous liquor distilled on premises to visitors of the distillery for consumption off the premises effective on the adoption (which must occur no later than October 1, 2015) of temporary rules by the ABC Commission.

Certain ABC permittees are allowed to sell cider in certain containers for consumption off the permitted premises, and technical changes are made to the laws concerning the sale of malt beverages in growlers.

Alternating proprietorships for breweries are authorized.

The holder of a brewery permit is allowed to sell malt beverages to a nonresident wholesaler if the malt beverages are shipped from the brewery to licensed wholesalers.

Effective: June 19, 2015 unless otherwise noted above

Session Law 2015-105

Senate Bill 212

Retired Law Enforcement Officers' Qualifications for Concealed Handgun

Amends G.S. 14-415.12A to provide that a person applying for a concealed handgun permit who is a qualified retired law enforcement officer and has met the standards for handgun qualification for active officers within the last 12 months satisfies the requirement that an applicant successfully complete an approved firearms safety and training course.

Effective: October 1, 2015

Session Law 2015-108

Senate Bill 621

Division of Motor Vehicles May E-mail Vehicle Registration Renewal Notifications

Amends G.S. 20-66(a) to provide that upon receiving written consent from the vehicle owner, the Division of Motor Vehicles may send the vehicle registration renewal notice electronically to an e-mail address provided by the owner. A similar provision is added to G.S. 105-330.5(b) so that the Property Tax Division of the Department of Revenue or its third-party contractor may send by e-mail a copy of the combined tax and registration notice for a registered classified motor vehicle.

Effective: January 1, 2016

Session Law 2015-125

House Bill 148

Insurance Requirements for Mopeds

In 2014, the General Assembly passed a bill which required mopeds to be registered with DMV. The owner is issued the same type of registration card and plate issued for motorcycles. This session's bill amends G.S. 20-53.4 to clarify that mopeds do not require certificates of title. The bill also amends G.S. 20-309, and makes other conforming changes to Chapter 20, to require insurance for mopeds.

Effective: July 1, 2016

Session Law 2015-141

Senate Bill 286

Regulation of Electronic Cigarettes, Cigars, etc.

New G.S. 14-401.18A makes it a Class A1 misdemeanor for any person, firm, or corporation to sell, offer for sale, or introduce into commerce in North Carolina (1) an e-liquid container unless the container has child-resistant packaging; and (2) an e-liquid container for an e-liquid product containing nicotine unless the packaging states the product contains nicotine. The statute defines the following terms accordingly: “child-resistant packaging” is packaging designed or constructed to be significantly difficult for children under 5 to open or obtain a harmful amount of the substance contained therein within a reasonable time; “e-liquid” is a liquid product, whether or not containing nicotine, intended to be vaporized and inhaled as vapor product; “e-liquid container” is a bottle or other container of e-liquid, but the term excludes a container holding liquid intended for use in a vapor product if the container is pre-filled and sealed by the manufacturer and not intended to be opened by a consumer; and “vapor product” is any noncombustible product that uses a mechanical heating element, battery or electric circuit that can be used to heat a liquid solution in a vapor cartridge, including e-cigarettes, e-cigars, e-cigarillos, and e-pipes.

Effective: December 1, 2015

Session Law 2015-144 House Bill 640

Changes to Wildlife Laws

Among other changes, amends G.S. 113-276.3(d), by adding a third or subsequent conviction of G.S. 14-159.6(a) (trespass on posted property to hunt, fish, or trap without written permission) to the list of offenses for which there is a two-year license or permit suspension.

Amends G.S. 103-2 (which previously prohibited hunting on Sundays except in defense of one’s property and under other limited exceptions) to allow a landowner, member of the landowner’s family, or any person with the landowner’s permission, to hunt with firearms on Sunday on the landowner’s property with the following limitations: (1) hunting between 9:30 a.m. and 12:30 p.m. is prohibited, except on controlled hunting preserves; (2) hunting of migratory birds is prohibited; (3) using a firearm to take deer that are run or chased by dogs is prohibited; (4) hunting within 500 yards of a place of worship or accessory structure or within 500 yards of a residence not owned by the landowner is prohibited; and (5) hunting in a county with a population greater than 700,000 people is prohibited. A violation of the statute remains a Class 3 misdemeanor.

Effective: October 1, 2015

Session Law 2015-150 House Bill 273

DWI Changes Concerning Deferred Prosecution and Expungement

Amended G.S. 15A-1341(a) provides that if a person is being placed on probation for a conviction of impaired driving under G.S. 20-138.1, subsections (a1) and (a4) (deferred prosecution and conditional discharge for a person charged with a Class H or I felony or a misdemeanor), and subsections (a2) and (a5) (deferred prosecution and conditional discharge for drug treatment program), do not apply and the person is ineligible for deferred prosecution and conditional discharge under these provisions.

G.S. 15A-145 (expunction of misdemeanor conviction for first offender under 18), G.S. 15A-145.4 (expunction of nonviolent felony conviction for first offender under 18), and G.S. 15A-145.5 (expunction

of certain nonviolent misdemeanor or felony convictions without age limitation) are amended to prohibit an expunction for any offense involving impaired driving as defined in G.S. 20-4.01(24a).

Effective: December 1, 2015

Session Law 2015-152
House Bill 39

Illegal Operation of Amusement Device Causing Serious Injury or Death

This session law makes several changes to laws concerning an “amusement device” (defined in G.S. 95-111.3), including amending G.S. 95-113.13 to make it a Class E felony plus a mandatory fine if a person illegally operates an amusement device and causes serious injury to or death of any person.

Effective: December 1, 2015

Session Law 2015-154
House Bill 766

Hemp Extract Exemption Modified

This session law makes several changes to the law permitting the use of hemp extract as an alternative treatment for intractable epilepsy including amending G.S. 90-94.1 so that the permissible amount of hemp extract is modified as being: (1) composed of less than nine-tenths of one percent (currently, three-tenths of one percent) tetrahydrocannabinol by weight, and (2) composed of at least five percent (currently ten percent) cannabidiol by weight.

Effective: August 1, 2015

Session Law 2015-162
House Bill 341

Drugs Added to Chapter 90 Controlled Substances Lists

This session law adds various drugs to Schedules I, V, and VI in G.S. 90-89, 90-90, and 90-94, respectively.

Effective: December 1, 2015

Session Law 2015-163
House Bill 6

Autocycle Defined and Regulated

This session amends G.S. 20-4.01(27) to define an “autocycle” as a three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, air bag protection, completely enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles. Various provisions of Chapter 20 of the General Statutes have been amended to regulate autocycles. In sum, the operator is required to have a Class C regular driver’s license. The driver is *not* required to have a motorcycle endorsement, wear a helmet, or burn headlights.

Effective: October 1, 2015

Session Law 2015-173
House Bill 59

Amendments to Statutes Admitting Reports of Forensic and Chemical Analysis and Remote Testimony

Effective for notices of intent to introduce a statement or report provided by the State, this session law amends G.S. 8-58.20(f) and (g) (forensic analysis report, affidavit, and statement admissible), G.S. 15A-1225.3(b) (remote testimony by forensic analyst permitted), G.S. 20-139.1(c1) (report of chemical analysis of blood or urine admissible), G.S. 20-139.1(c3) (establishing chain of custody of tested or analyzed blood or urine without calling unnecessary witnesses), G.S. 20-139.1(c5) (remote testimony permitted by analyst about results of chemical analysis of blood or urine), G.S. 90-95(g) (report of drug analysis admissible), and G.S. 90-95(g1) (establishing chain of custody of analyzed drug evidence without calling unnecessary witnesses), to provide if the defendant's attorney or a defendant, if unrepresented, fails to file a written objection as provided in these statutes, then "the objection shall be deemed waived and" the specified report, affidavit, statement, or remote testimony must be admitted into evidence.

Effective: July 31, 2015

Session Law 2015-231
House Bill 268

Highway Obstruction Quick Clearance Requirements

Amends G.S. 20-161(f), which permits the immediate removal from the state highway system of wrecked, abandoned, burned, etc., vehicles interfering with regular traffic flow, to require the concurrence of the Department of Transportation and an investigating law enforcement officer before removal occurs.

Effective: August 25, 2015

Session Law 2015-232
Senate Bill 446

Changes to Regulation of Unmanned Aircraft Systems (Drones)

Provisions in the 2013 and 2014 appropriation acts are amended to provide that until December 15, 2015, the State Chief Information Officer (CIO) has the authority to approve or disapprove (1) the procurement or operation of an unmanned aircraft system (UAS) by agents or agencies of the State or political subdivision, and (2) the disclosure of personal information about any person acquired through the operation of an UAS by these agents or agencies. Amended G.S. 63-95(b) provides that the Division of Aviation (hereafter, Division) must develop a knowledge test for operating an UAS (current law requires a knowledge and skills test). The test must ensure that the UAS operator is knowledgeable about State statutes and regulations concerning UAS operation.

Amended G.S. 63-96: (1) reduces the minimum age for obtaining a permit to commercially operate an UAS from 18 years old to 17 years old; (2) requires the Division to administer a program that complies with all applicable federal regulations; and (3) provides that the Division rules for designating a

geographic area for operating an UAS must not be more restrictive than those of the Federal Aviation Administration (FAA).

Effective: August 25, 2015

Session Law 2015-215
House Bill 371

National Guard Exempt from Concealed Weapon Law

G.S. 14-269(b)(3) has exempted officers and soldiers of the National Guard from the laws prohibiting the carrying of a concealed weapon when the Guardsman was called into actual service. New G.S. 14-269(b)(3a) now also exempts officers and soldiers of the National Guard when the member has been designated in writing by the Adjutant General, has a concealed handgun permit, is discharging official duties, is not consuming alcohol or an unlawful controlled substance, and does not have alcohol or an unlawful controlled substance remaining in his or her body.

Effective: August 18, 2015

Session Law 2015-218
House Bill 184

Time Limitation on Confidentiality of Public Records

New G.S. 132-11 provides that all restrictions on access to public records expire 100 years after creation of the record. The statute does provide exemptions for various records, including any record that (1) is ordered to be sealed by any state or federal court; (2) is prohibited from being disclosed under federal law, rule, or regulation; or (3) is a record of a juvenile, probationer, parolee, post-releasee, or prison inmate, including medical and mental health records.

Effective: August 18, 2015

Session Law 2015-225
Senate Bill 699

Certain Personal Information of Law Enforcement Officers' Protected from Disclosure

G.S. 160A-168 (privacy of city employee personnel records) is amended to provide that the following information of a sworn law enforcement officer shall not generally be disclosed to an employee or any other person: (1) information that might identify the residence of the officer; (2) emergency contact information; or (3) any personal identifying information defined in G.S. 14-113.20 (identity theft statute). Disclosure may occur under G.S. 132-1.4 (criminal investigative records released by court order), G.S. 132-1.10 (limited release of social security numbers and other personal identifying information), or for the personal safety of the officer or any other person residing in the same residence. G.S. 132-1.7 is also amended to provide that public records shall not include mobile telephone numbers issued by a local, county, or state government to a sworn law enforcement officer or nonsworn employee of a public law enforcement agency.

Effective: October 1, 2015

Session Law 2015-212
House Bill 566

Show-Up Procedures

Amends G.S. 15A-284.52, the Eyewitness Identification Reform Act, to clarify that an eyewitness is any person, including a law enforcement officer, whose identification by sight of another person may be relevant in a criminal proceeding. The statute was further amended to define show-ups and to establish mandatory procedures for them. A “show-up” is defined as a procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime. A show-up must meet all of the following requirements:

- (1) it may only be conducted when a suspect matching the perpetrator’s description is located in close proximity in time and place to the crime, or there is a reasonable belief that the perpetrator has changed his or her appearance close in time to the crime, and only if there are circumstances that require the immediate display of a suspect to an eyewitness;
- (2) it may only be performed using a live suspect and may not be conducted with a photograph; and
- (3) investigators must photograph a suspect at the time and place of the show-up to preserve a record of the suspect’s appearance when the show-up procedure was conducted.

The session law also requires the N.C. Criminal Justice Education and Training Standards Commission to develop a policy, by August 1, 2016, concerning standard procedures to conduct show-ups applicable to all law enforcement agencies which must address all of the following, in addition to the requirements set forth above: (a) standard instructions for an eyewitness; (b) confidence statements by the eyewitness, including information concerning the eyewitness’ vision, the circumstances of the events witnessed, and communications with other eyewitnesses, if any; (c) training of officers on how to conduct show-ups; and (d) any other matters the Commission considers appropriate.

Effective: December 1, 2015

Session Law 2015-176 Senate Bill 192

Electronic or Fax Transmission of Certain Orders; Transportation of Persons Being Involuntarily Committed

Amends G.S. 50B-3 and G.S. 50C-9 to require law enforcement agencies to accept receipt of copies of domestic violence protective orders or civil no-contact orders issued by the clerk of court by electronic or fax transmission for service on defendants, and creates new G.S. 122C-210.3 requiring the same for involuntary commitment orders.

Amends G.S. 122C-251(d) to provide that, to the extent feasible, a city or county must provide a driver or attendant who is the same sex as the respondent to transport the respondent for an involuntary commitment matter.

Effective: August 5, 2015

Session Law 2015-181 House Bill 383

Various Sexual Offenses Reorganized, Renamed and Renumbered

In order to make various sexual offenses more easily distinguishable from one another, as recommended by the North Carolina Court of Appeals, this session law reorganizes, renames, and renumbers various rape and other sexual offenses, and makes conforming changes throughout the General Statutes.

The provisions of current G.S. 14-27.2 (first-degree rape) are split into new G.S. 14-27.21 (first-degree forcible rape) and G.S. 14-27.24 (first-degree statutory rape). Current G.S. 14-27.3 (second-degree rape) is recodified as G.S. 14-27.22 and renamed second-degree forcible rape.

Current G.S. 14-27.2A (rape of a child; adult offender) is recodified as G.S. 14-27.23 and renamed statutory rape of a child by an adult. Current G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old) is recodified as G.S. 14-27.25 and renamed statutory rape of person who is 15 years of age or younger. The changes to the elements of this offense that were made in Session Law 2015-62 are reflected in the new statute, and the sexual offense elements in prior G.S. 14-27.7A are recodified in new G.S. 14-27.30, which is renamed statutory sexual offense of person who is 15 years of age or younger.

Similar changes are made with the forcible and statutory sexual offense statutes as were made with the forcible and statutory rape statutes, described above.

The two distinct offenses in current G.S. 14-27.7 (intercourse and sexual offenses with certain victims) are separated into two new statutes and renamed: G.S. 14-27.31 (sexual activity by a substitute parent or custodian) and G.S. 14-27.32 (sexual activity with a student).

Effective: December 1, 2015

Session Law 2015-182 House Bill 397

Disposition of Seized Assets When Person Convicted of Exploitation of Older or Disabled Adult

Current G.S. 14-112.2 and 14-112.3 allow a district attorney to apply to a court before trial to freeze or seize the assets of a defendant who may divesting himself or herself of assets that could be seized if the defendant is convicted of G.S. 14-14-112.2 (exploitation of older or disabled adult). This session law specifies (1) the contents and procedure involved with a court order to freeze or seize assets; and (2) how the seized assets must be handled to satisfy an order of restitution.

Effective: October 1, 2015

Session Law 2015-183 House Bill 134

Minor Who Solicits As A Prostitute Immune From Prosecution of Solicitation of Prostitution

Amends G.S. 14-205.1 to provide that a minor (person under 18 years old) who solicits as a prostitute is immune from prosecution of solicitation of prostitution. Instead, the person must be taken into temporary protective custody as an undisciplined juvenile under Article 19 of Chapter 7B of the General Statutes. A law enforcement officer who takes the minor into custody must immediately report an allegation of a violation of G.S. 14-43.11 (human trafficking) and G.S. 14-43.13 (sexual servitude) to the county social

services director in the county where the minor resides or is found, who must initiate an investigation into child abuse or child neglect within 24 hours.

Effective: August 5, 2015

Session Law 2015-185
House Bill 229

Limited Privilege May Include Driving To and From Place of Worship

Amends G.S. 20-179.3 to allow a limited driving privilege for driving to and from a place of religious worship.

Effective: October 1, 2015

Session Law 2015-186

House Bill 529

Punishment and Revocations Changed for Driving While License Revoked; Miscellaneous Chapter 20 Modifications

For a more complete discussion of this session law, see Shea Denning, *General Assembly Approves Relief from the Endless Loop of License Revocation*, North Carolina Criminal Law Blog (UNC School of Government, August 3, 2015), <http://nccriminallaw.sog.unc.edu/general-assembly-approves-relief-from-the-endless-loop-of-license-revocation/>.

Driving while license revoked convictions and revocations. Two types of driving while license revoked (hereinafter “DWLR”) which have been codified in G.S. 20-28(a) are now assigned to their own subsections. DWLR for impaired driving, a Class 1 misdemeanor, is codified in amended G.S. 20-28(a1). DWLR generally, a Class 3 misdemeanor, remains in G.S. 20-28(a). The punishment for driving without reclaiming a driver’s license, punished as a Class 3 misdemeanor, is recodified in amended G.S. 20-28(a2). Driving after notification or failure to appear, a Class 1 misdemeanor, is recodified in new G.S. 20-28(a3).

A person convicted of DWLR under G.S. 20-28(a) will no longer be subject to a mandatory additional period of license revocation. A person convicted of violating G.S. 20-28(a1) or (a3) will still be subject to the same automatic revocation periods. A person punished for driving without a reclaimed license under G.S. 20-28(a2) is no longer subject to an automatic additional revocation period.

A person’s license has been subject to automatic revocation under G.S. 20-28.1 if the person is convicted of a motor vehicle moving offense committed while the person’s license was revoked. Amended G.S. 20-28.1(a) provides that a violation of G.S. 20-7(a) (no operator’s license), 20-24.1 (failure to appear or pay fine, penalty, or costs for motor vehicle offense), or G.S. 20-28(a) or (a2) shall not be considered a motor vehicle moving offense unless the offense occurred in a commercial motor vehicle or the person held a commercial driver’s license at the time of the offense.

Ignition interlock. Amends G.S. 20-17.8(f) to provide that a person subject to an ignition interlock restriction who violates the restriction commits the offense of DWLR for impaired driving under G.S. 20-28(a1) and is subject to the punishment and license revocation as provided in that subsection.

DWI sentencing change. Amends G.S. 20-179(c)(2) changing the description of the DWI grossly aggravating factor as driving while one's driver's license was revoked under G.S. 20-28(a1) (formerly under G.S. 20-28) and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

Effective: December 1, 2015

Session Law 2015-188
Senate Bill 345

Limitation on Time Motor Vehicle May Be Impounded After Collision

New G.S. 20-166.3 provides that a motor vehicle that is towed and stored at a law enforcement agency's direction after a collision may be held for evidence for not more than 20 days without a court order. Without such an order, the vehicle must be released to the vehicle owner, insurer, or lien holder on payment of the towing and storage fees. This new statute does not apply to a motor vehicle seized as a result of a violation of law or abandoned by the owner.

Effective: August 1, 2015

Session Law 2015-190
Senate Bill 182

Regulation of Automatic License Plate Readers

New Article 3D of Chapter 20 of the General Statutes requires state and local law enforcement agencies using an automatic license plate reader system to adopt a written policy governing its use before the system is operated, and requires the policy to address nine issues set out in new G.S. 20-183.23. Captured plate data obtained by the system must not be preserved for more than 90 days after the date the data is captured, unless there is a preservation request complying with new G.S. 20-183.24(c) or a state or federal search warrant is issued. Captured plate data is confidential and not a public record. Data must not be disclosed except to a federal, state, or local law enforcement agency for a legitimate law enforcement or public safety purpose pursuant to a written request from a requesting agency.

Effective: December 1, 2015

Session Law 2015-195
House Bill 562

Amendments to Various Firearms Laws

Persons Exempt From Prohibition Against Carry Concealed Weapon. The following people are included as being exempt from the offense of carrying a concealed weapon under G.S. 14-269: (1) a district attorney carrying a concealed weapon while in the courtroom; (2) a person employed by the Department of Public Safety who has been designated in writing by the secretary of the department, possesses written proof of the designation, has a concealed handgun permit or a permit considered valid under G.S. 14-415.24 (reciprocity), and there is no drug or alcohol consumption or drug or alcohol remaining in the person's body; and (3) an administrative law judge who has a concealed handgun permit or a permit considered valid under G.S. 14-415.24 (reciprocity), and there is no drug or alcohol consumption or drug or alcohol remaining in the person's body.

Pocket Knives Allowed in State Capitol. Amends G.S. 14-269.4 (weapons on certain State property and in courthouses) to exempt from its prohibitions a person who possesses an ordinary pocket knife in a closed position in the State Capitol Building or on its grounds.

Weapons on Educational Property. Amends G.S. 14-269.2(k) (weapons on educational property) to exempt from its provisions a person who has a concealed handgun permit, or who is exempt from obtaining a permit, when any of the following conditions are met: (1) the person has a handgun concealed on his/her person and the person remains in a locked vehicle and only unlocks the vehicle to allow the entrance or exit of another person; or (2) the person is within a locked vehicle and removes the handgun from concealment only for the time reasonably necessary to move the handgun (a) from concealment on the person to a closed compartment or container within the vehicle, or (b) from within a closed compartment or container within the vehicle to concealment on the person. Creates new subsection (l) under G.S. 14-269.2 to add as an affirmative defense that the person was authorized to have a concealed weapon in a locked vehicle pursuant to the provisions set forth above and removed the handgun from the vehicle only in response to a situation in which deadly force was justified.

Effective: July 1, 2015

Firearms at State Fair. New G.S. 106-503.2 provides that the Commissioner of Agriculture is authorized to prohibit the carrying of firearms on the State Fairgrounds during the State Fair, with exemptions for (1) a person with a concealed handgun permit or, person exempt from obtaining a permit, who keeps a weapon in the person's locked vehicle as specified in the statute; and (2) exempted officers under G.S. 14-269(1), (2), (3), (4), or (5).

Effective: August 5, 2015

Concealed Handgun Permits. Amends G.S. 14-415.13(a) to provide that the sheriff must provide the application form for a concealed handgun permit electronically, and the sheriff may not request employment information, character affidavits, additional background checks, photographs, or other information unless specifically permitted by Article 54B of Chapter 14, which contains the concealed handgun permit provisions.

Effective: October 1, 2015

Amends G.S. 14-415.12(b) by adding the following persons to the list of applicants to whom a sheriff must deny a concealed handgun permit: (1) an applicant who has been adjudicated guilty of or received a PJC or suspended sentence for a misdemeanor crime of violence under G.S. 14-33(c)(1) (assault inflicting serious injury or with deadly weapon), 14-33(c)(2) (assault on a female), 14-33(c)(3) (assault on a child), 14-33(d) (assault on person with a personal relationship), 14-277.3A (stalking), 14-318.2 (child abuse), 14-134.3 (domestic criminal trespass), 50B-4.1 (violation of domestic violence protection order), or former 14-277.3 (stalking); (2) an applicant prohibited from possessing a firearm under federal law for conviction of a misdemeanor crime of domestic violence; and (3) an applicant adjudicated guilty of or who has received a PJC or suspended sentence for assault on an officer or other specified government official.

Effective: July 1, 2015

Amends G.S. 14-415.12(a) to permit a person to apply for a concealed handgun permit who has been lawfully admitted for permanent residence under federal law.

Effective: August 5, 2015

Amends G.S. 14-415.15(a) to require a sheriff to make a request for any records concerning the mental health or capacity of an applicant for a concealed handgun permit with 10 days of the receipt of items listed in G.S. 14-415.13 (application for permit).

Effective: October 1, 2015

Amends G.S. 14-415.21 by reducing the punishment for a person who has a concealed handgun permit and carries it in violation of G.S. 14-415.11(c)(8) (unauthorized to carry handgun on private premises when notice that concealed handgun is prohibited by sign or statement by person in charge) from a Class 1 misdemeanor to an infraction with a maximum \$500 fine.

Effective: December 1, 2015

Modifications for Pistol Permit Applications. Amends G.S. 14-404 (pistol permit application) by: (1) adding a provision that for determining an applicant's good moral character to receive a pistol permit, the sheriff shall only consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application; and (2) requiring that an application must be on a form created by the State Bureau of Investigation in consultation with the N.C. Sheriff's Association, and specifying the information that the applicant is required to submit.

Effective: December 1, 2015

Reporting Certain Disqualifiers to National Instant Criminal Background Check System (NICS). New G.S. 14-409.43 (reporting to NICS) essentially replaces provisions of repealed G.S. 122C-54(d1) and G.S. 14-404(c1), with some additional changes. G.S. 122C-54.1 (restoration process to remove mental commitment bar) is recodified as G.S. 14-409.42.

Effective: January 1, 2016

Statewide Uniformity of Local Regulations. Amends G.S. 14-415.23 (statewide uniformity for state and local government regulations of legally carrying concealed handgun) to provide that a person adversely affected by any ordinance or regulation promulgated or caused to be enforced by an local government unit in violation of this statute may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. A court must award the prevailing party in such an action reasonable attorneys' fees and court costs as authorized by law.

Effective: August 5, 2015

Amends G.S. 14-409.40(b) to prohibit county or municipal ordinances from regulating the taxation, manufacture and transportation of firearms, ammunition, or dealers in firearms. New subsection (h) provides that a person adversely affected by any ordinance in violation of the statute may bring an action for declaratory and injunctive relief and for actual damages arising from the violation. A court must award the prevailing party in the action reasonable attorneys' fees and court costs as authorized by law.

Effective: December 1, 2015

Federal Requirement for Chief Law Enforcement Officer's Certification. New G.S. 14-409.41 provides that when a chief law enforcement officer's certification is required by federal law or regulation to transfer or make a firearm, the officer must, with 15 days of receipt of a request for certification, provide the certification if the applicant is not prohibited by state or federal law from receiving or possessing the firearm and is not subject to a proceeding that could result in a prohibition. An applicant whose request for certification is denied may appeal the decision to the district court of the district in which the request was made.

Effective: July 1, 2015

New Fingerprint and Related Duties for Law Enforcement Agencies. This session law amends G.S. 15A-502 to impose new fingerprint and related duties on law enforcement agencies.

New subsection (a2) requires an arresting law enforcement agency to fingerprint a person charged with the following misdemeanors, report the offenses to the National Instant Criminal Background Check System (NICS), and forward the fingerprints to the SBI: G.S. 14-134.3 (domestic criminal trespass), G.S. 15A-1382.1 (offenses involving domestic violence); G.S. 50B-4.1 (violation of domestic violence protection order); G.S. 20-138.1 (impaired driving); G.S. 20-138.2 (commercial impaired driving); G.S. 20-138.2A (operating commercial vehicle after consuming alcohol); G.S. 20-138.2B (operating various specialized vehicles after consuming alcohol); and G.S. 90-95(a)(3) (possessing controlled substance).

New subsection (a3) requires an arresting law enforcement agency to provide to the magistrate as much of the following information about the arrestee as possible: (1) name including first, last, middle, maiden, and nickname or alias; (2) address including street, city and state; (3) drivers license number and state of issuance; (4) date of birth; (5) sex; (6) race; (7) social security number; and (8) relationship to the alleged victim and whether it is a "personal relationship" as defined by G.S. 50B-1(b).

New subsection (a4) requires an arresting law enforcement agency to cause a person charged with misdemeanor assault, stalking, or communicating a threat and held under G.S. 15A-534.1 to be fingerprinted so the offense can be reported to NICS and the fingerprints forwarded to the SBI.

New subsection (a5) requires a magistrate to enter into the court information system all information about the arrestee provided by the arresting law enforcement agency.

Effective: October 1, 2015

Session Law 2015-198 House Bill 774

Execution Procedures Modified

Amends G.S. 15-190(a) to allow a medical professional, other than a physician (such as a physician assistant, nurse practitioner, registered nurse, emergency medical technician, etc.) to monitor a lethal injection administered as a result of a death sentence and to certify the fact of the execution. If a physician is not present at the execution, a physician must be present on the premises and available to examine the body after the execution and pronounce the prisoner dead. Amends G.S. 15-187 to delete reference to a specific drug (ultrashort acting barbiturate) to be used during an execution. Amends G.S. 132-1.2 removing from public records the name, address, etc., of any person or entity that manufactures, compounds, dispenses, etc., drugs or supplies obtained for an execution.

Effective: August 5, 2015

Session Law 2015-202
Senate Bill 233

Automatic Expunction When Charge Dismissed Based Upon Identity Theft or Mistaken Identity

Amends G.S. 15A-147 to provide that if a person is charged with a crime or infraction as a result of identity theft or mistaken identity, and the charge is consequently dismissed, the prosecutor or other judicial officer who ordered the dismissal must provide notice to the court of the dismissal, and the court must then order the expunction of all official records containing any entries concerning the person's apprehension, charge, or trial.

Effective: December 1, 2015

Session Law 2015-241
House Bill 97

2015 Appropriations Act

School Safety. Amended G.S. 115C-105.49 provides that, at least once annually, each local school unit must require each school to hold a school-wide tabletop exercise and drill based on the procedures documented in its School Risk Management Plan. The drill must include a practice school lockdown due to an intruder on school grounds. Schools are strongly encouraged to include law enforcement and emergency management agencies in their tabletop exercises and drills. The Department of Public Safety (DPS) and the Center for Safer Schools (CSS) must provide guidance and recommendations to local school units on the multiple hazards to plan and respond to, including intruders. Amended G.S. 115C-105.51 requires DPS and CSS, in collaboration with the Department of Public Instruction (DPI), to implement and maintain an anonymous safety tip line to receive anonymous student information on internal or external risks to the school population, school buildings, and school-related activities. DPS and CSS, in collaboration with DPI and the NC 911 Board, must implement and maintain a statewide panic alarm system to launch real-time 911 messaging to public safety answering points of internal and external risks to the school population, school buildings, and school-related activities.

Sensitive Public Security Information. Amended G.S. 132-1.7 provides that the following are not public records: specific security information or detailed plans, patterns, or practices (1) associated with prison operations, and (2) to prevent or respond to criminal, gang, or organized illegal activity.

Collection of DNA Sample Following Arrest for Certain Additional Felonies. Effective for arrests occurring on or after December 1, 2015, amended G.S. 15A-266.3A(f) includes the following additional felonies for which a DNA sample must be collected for analysis after arrest: Assault with a deadly weapon on executive, legislative, or court officer (G.S. 14-16.6(b)); Assault inflicting serious bodily injury on executive, legislative, or court officer (G.S. 14-16.1(c)); any felony offense in Article 6A, Unborn Victims; Malicious castration (G.S. 14-28); Castration or other maiming without malice aforethought (G.S. 14-29); Malicious maiming (G.S. 14-30); Malicious throwing of corrosive acid or alkali (G.S. 14-30.1); Maliciously assaulting in a secret manner (G.S. 14-31); Aggravated assault or assault and battery on handicapped person (G.S. 14-32.1(e)); Patient abuse and neglect, intentional conduct proximately causes death (G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1));

Domestic abuse of disabled or elder adults resulting in injury (G.S. 14-32.4); Assault inflicting serious bodily injury or injury by strangulation (G.S. 14-32.4); Habitual misdemeanor assault (G.S. 14-33.2); Discharging certain barreled weapons or a firearm into occupied property (G.S. 14-34.1); Adulterated or misbranded food, drugs, etc. with intent to cause serious injury or death or extort (G.S. 14-34.4); Discharging a firearm from within an enclosure (G.S. 14-34.9); Discharging firearm within enclosure to incite fear (G.S. 14-34.10); Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Breaking or entering buildings with intent to terrorize or injure (G.S. 14-54(a1)); Common law robbery punishable pursuant to G.S. 14-87.1); Train robbery (G.S. 14-88); Assaulting a law enforcement agency animal, assistance animal, or a search and rescue animal willfully killing the animal (G.S. 14-163.1(a1)); Secretly peeping into room occupied by another person (G.S. 14-202); Possession of dangerous weapon in prison resulting in bodily injury or escape (G.S. 14-258.2); Taking of hostage, etc. by prisoner (G.S. 14-258.3); Malicious conduct by prisoner (G.S. 14-258.4); Assault on emergency personnel with a dangerous weapon or substance (14-288.9); Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological or chemical weapon of mass destruction (G.S. 14-288.21); Unlawful use of a nuclear, biological or chemical weapon of mass destruction (G.S. 14-288.22); Child abuse inflicting serious injury (G.S. 14-318.4(a)); Child abuse inflicting serious bodily injury (G.S. 14-318.4(a3)); Cruelty to animals, deprivation of necessary sustenance (G.S. 14-360(a1)); Cruelty to animals, maliciously torture, mutilate, maim, cruelly beta, disfigure, poison, or kill (G.S. 14-360(b)); and Attempt to conceal evidence of non-natural death by dismembering or destroying remains (G.S. 14-401.22(e)).

The Joint Legislative Oversight Committee on Justice and Public Safety must study extending the collection of DNA samples to people arrested for any felony and report its findings and recommendations to the 2016 legislative session.

DWI Vehicle Storage and Sale. Amends G.S. 20-28.3(d) (custody of motor vehicle when seized under DWI forfeiture law) by substituting the State Surplus Property Agency (Agency) of the Department of Administration in place of the Department of Public Instruction concerning constructive possession of a seized vehicle when it is delivered to a location designated by the Agency. Adds provisions to G.S. 20-28.5 for the sale of a forfeited motor vehicle when it is in the possession or constructive possession of the Agency.

Modification of S.L. 2015-31 Concerning Stop Lamps in Older Motor Vehicles. Effective October 1, 2015, S.L. 2015-31 amended G.S. 20-129(g) and G.S. 20-129.1 clarifying that motor vehicles (other than motorcycles) must be equipped with two stop lamps, commonly known as brake lights, one on each side of the rear of the vehicle (see page 2 of this bulletin). This session law further clarifies that, effective October 1, 2015, a motor vehicle manufactured after December 31, 1955, and on or before December 31, 1970, must only be equipped with a stop lamp in the rear of the vehicle.

Effective: July 1, 2015 unless otherwise noted above

Session Law 2015-247

House Bill 173

Preservation of biological evidence

Current G.S. 15A-268 provides that a custodial agency must preserve physical evidence that is reasonably likely to contain biological evidence collected in the course of a criminal investigation or prosecution. Subsection 5A-268(a5) of the statute provides that a duty to preserve may not be waived knowingly and voluntarily by a defendant without a court hearing. This subsection is amended to clarify

that the aforementioned hearing may be included as part of any other hearing associated with the disposition of the case. Subsection (a6) is amended to provide that, despite the retention requirements for biological evidence, at any time after collection of evidence and before or at the time of disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character to render retention impracticable, or if the evidence should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence instead of the actual physical evidence. The subsection sets out the court procedures.

Effective: October 1, 2015

Session Law 2015-250
House Bill 792

Disclosure of Private Images; Expansion of Indecent Exposure Law

Disclosure of Private Images. New G.S. 14-190.5A creates the offense of disclosure of private images. A person commits this offense if all of the following exist:

(1) the person knowingly discloses an “image” (defined as photo, film, video, recording, digital, or other reproduction) of another person with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or cause others to do so;

(2) the depicted person is identifiable from the disclosed image itself or information offered in connection with the image;

(3) the depicted person’s “intimate parts” (defined as genitals, pubic area, anus, or nipple of a female over the age of 12) are exposed, or the depicted person is engaged in “sexual conduct” (defined as vaginal, anal, or oral intercourse; masturbation; excretory functions; lewd exhibition of uncovered genitals; an act or condition that depicts torture, physical restraint by being fettered or bound, etc.) in the disclosed image;

(4) the person discloses the image without the affirmative consent of the depicted person; and

(5) the person discloses the image under circumstances such that the person knew or should have known that the depicted person has a “reasonable expectation of privacy” (defined as when a depicted person has consented to the disclosure of an image within the context of a personal relationship as defined in G.S. 50B-1(b) and the depicted person reasonably believes the disclosure will not go beyond that relationship).

The offense is not applicable to (1) images involving voluntary exposure in public or commercial settings; (2) disclosures made in the public interest, including reporting of unlawful conduct or the lawful and common practices of law enforcement, criminal reporting, medical treatment, scientific or educational activities, etc.; and (3) providers of an interactive computer service for images provided by another person.

This offense is punished as a: (1) Class H felony if the person is 18 years old or older at the time of the offense; (2) Class 1 misdemeanor for a first offense by a person under 18 at the time of the offense; and (3) Class H felony for a second or subsequent offense by a person under 18 at the time of the offense. A civil action is authorized for a violation of the statute with specified damages.

The Joint Legislative Oversight Committee on Justice and Public Safety must study the issue of improper disclosure of images of people superimposed onto other images exposing intimate parts or depicting sexual conduct. The study must include whether any existing crimes or civil actions currently apply and whether this new offense should be amended to include superimposed images. The committee must

report its findings and any recommendations by April 1, 2016.

New indecent exposure offenses. G.S. 14-190.9 is amended to create three new offenses. Unless the conduct is prohibited by another law providing greater punishment: (1) a person who willfully exposes his or her private parts in the presence of anyone other than a consenting adult on the private premises of another or so near thereto to be seen from the private premises for the purpose of arousing or gratifying sexual desire is guilty of a Class 2 misdemeanor; (2) a person located in a private place who willfully exposes his or her private parts with the knowing intent to be seen by a person in a public place is guilty of a Class 2 misdemeanor; and (3) a person at least 18 years old who willfully exposes his or her private parts in a private residence of which the person is not a resident and in the presence of any other person less than 16 years old who is a resident of that private residence is guilty of a Class 2 misdemeanor.

Effective: December 1, 2015