



Police Law Bulletin



City Attorneys' Office

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2016 Legislation Affecting Criminal Law and Procedure



Session Law 2016-10 House Bill 357

Amendments to Notice and Demand Provisions Governing Admissibility of Chemical Analyses In DWI Cases

This session law amends G.S. 20-139.1 to require the State to provide the laboratory analysis of blood or urine to the defendant no later than 15 business days after receiving the report to avail itself of the notice and demand procedures in G.S. 20-139.1(c1). It likewise requires the State to provide the chain of custody statement to the defendant within 15 business days of receiving it to utilize G.S. 20-139.1(c3)(3) and the chemical analyst's affidavit to the defendant within 15 business days of receipt to rely on the notice and demand procedures in G.S. 20-139.1(e2).

The session law further amends G.S. 20-139.1 to provide that the written objection filed by the defendant under (c1), (c3)(3), or (e2) or the defendant's failure to file a written objection under those provisions shall remain effective at any subsequent calendaring of the proceeding. Thus, a defendant may not demand the appearance of an analyst or custodian for a new trial date if he or she did not demand the witness's appearance within five business days of the first proceeding for which the State provided notice.

Effective: October 1, 2016

Session Law 2016-25 House Bill 256

Partially Disabled Veterans May Utilize Handicapped Parking Spaces

Amends G.S. 20-37.6(c1) allowing medical certification and recertification requirements for handicapped parking privileges to be satisfied by a disability determination issued by the U.S. Department of Veteran Affairs. Amends G.S. 20-37.6(e)(1) allowing a partially disabled veteran to park in a handicapped parking space when displaying a partially disabled veteran special plate.

Effective: June 22, 2016

Session Law 2016-26
House Bill 283

First-Degree Trespass Involving Reentry After Removal By Execution of Valid Order or Writ of Possession, or Under Color of Title By Person Who Knowingly Creates False Document of Title or Possession, Class I Felony

G.S. 14-159.12 (first-degree trespass) is amended so that it is a Class I felony with a mandatory minimum \$1,000 fine if (1) the offense occurs on real property where the person has reentered after having previously been removed by the execution of a valid order or writ of possession; or (2) the offense occurs under color of title when the person had knowingly created or provided materially false evidence of an ownership or possessory interest.

Effective: December 1, 2016

Session Law 2016-27
House Bill 292

Amendments to Bingo Regulations

Effective December 1, 2016, G.S. 14-309.14(5) is amended to require a person operating a beach bingo game to first obtain a license from the State Bureau of Investigation (SBI). Operation without a license is a Class 2 misdemeanor.

Effective October 1, 2016, G.S. 14-309.14(5) is amended to provide that any false information in an application for a beach bingo license is a Class 2 misdemeanor as well as cause for suspension of the license.

Effective June 22, 2016, “State Bureau of Investigation” is substituted for “Department of Public Safety” throughout Part 2 of Article 37 of General Statutes Chapter 14, which therefore places the SBI in charge of bingo licensing under G.S. 14-309.7 and involvement with bingo audits as set out in G.S. 14-309.11.

Effective: Various dates – see above text

Session Law 2016-34
House Bill 958

Impaired Boating Offenses

New G.S. 75A-10.3 is enacted to create felony impaired boating offenses substantively similar to the various felony impaired driving offenses found in G.S. 20-141.4. These new offenses are: (1) a Class D felony of death by impaired boating; (2) a Class F felony of serious injury by impaired boating; (3) a Class E felony of aggravated serious injury by impaired boating; (4) a Class D felony of aggravated death by impaired boating; and (5) a Class B2 felony of repeat death by impaired boating. G.S. 75A-10(b4) is amended to clarify that impaired boating is a Class 2 misdemeanor with a mandatory fine of not less than \$250.

Effective: December 1, 2016

Session Law 2016-73
House Bill 678

North Carolina Innocence Inquiry Commission

This session law implemented numerous changes to the laws concerning the North Carolina Innocence Inquiry Commission (hereafter, Commission), including the following:

G.S. 15A-1465(a) is amended to require the Commission Director to report to the Director of the Administrative Office of the Courts.

Several amendments were made to G.S. 15A-1467. (1) A claimant (a person who was convicted of a felony and asserts complete innocence) is deleted from the list of individuals allowed to make a claim of innocence for *any* conviction. A claimant may directly make a claim of factual innocence for convictions of homicide, robbery, offenses requiring sex offender registration, and any Class A through E felony. (2) If a convicted person requests a specific attorney with knowledge of his/her case, the Director must inform the Office of Indigent Defense Services of that request for its consideration. (3) The Commission may not conduct forensic testing and claimant interviews before obtaining the convicted person's signed agreement. (4) Absent a showing of good cause and the Commission chair's approval, if there is a formal inquiry concerning a claim of factual innocence, the Commission must use due diligence to notify each codefendant that an investigation will be conducted. If a codefendant also wishes to file a claim, he or she must do so within 60 days from the receipt of the notice, or the claim may be barred from future investigation.

Several amendments were made to G.S. 15A-1468. (1) At the completion of a formal inquiry, all relevant evidence is to be presented to the full Commission in a public hearing. The district attorney or defense counsel may not be excluded from any part of the hearing. (2) The district attorney, and the convicted person or his or her counsel, may agree at any time during the formal inquiry that there is sufficient evidence of factual innocence to merit judicial review by the three-judge panel and bypass the eight-member panel. (3) If the Commission concludes that there is sufficient evidence of factual innocence to merit judicial review, the Commission must make a copy of the entire file available to the district attorney and defense counsel.

Effective: August 1, 2016

Session Law 2016-75
House Bill 523

American Indian Designation on Drivers' Licenses

Currently, at the request of an applicant, a license must contain the applicant's race. G.S. 20-7(n) is amended to provide that the letters "AI" will designate an American Indian.

Effective: October 1, 2016

Session Law 2016-77
House Bill 253

Probation and Parole

This bill made several amendments to laws governing probation, post-supervision release, and parole, including:

The following regular conditions of probation are added to G.S. 15A-1343: (1) waiver of all rights concerning extradition proceedings if probationer is taken into custody outside North Carolina for failing to comply with conditions imposed for a felony conviction; and (2) submission to the taking of digitized photographs, including the probationer's face, scars, marks, and tattoos, to be included in the probationer's records. In addition, upon entry of an order of supervised probation, a defendant must submit a signed document to the Division of Adult Correction stating that: (1) the defendant will comply with the court-imposed conditions; and (2) if the defendant fails to comply with these conditions, the defendant waives all rights concerning extradition proceedings if the defendant was convicted of a felony.

Effective: December 1, 2016

G.S. 14-404(d), which provides exemptions from the pistol permit law, is amended to clarify that the exemption applies to probation and parole officers. G.S. 20-187.2, which regulates the award and sale of badges and firearms to the families of deceased law enforcement officers, and active and retiring officers, is amended making the statute applicable to probation and parole officers.

Effective: July 1, 2016

Session Law 2016-78
House Bill 287

Punishments for Insurance Law Fraud

Amends G.S. 58-50-40(c) to change the current Class H felony punishment for the insurance fiduciary offense in subsection (b) to: (1) a Class F felony if the total value of losses is \$100,000 or more; and (2) a Class H felony if the total value of losses is less than \$100,000. A new subsection (b1) is added to

G.S. 58-2-164 so that it is a Class H felony, with the possibility of a fine of not more than \$10,000., for an applicant who, with the intent to deceive an insurer, knowingly violates subsection (b) of the statute for the purpose of obtaining auto insurance covering one or more vehicles, the operation of which requires a Commercial Driver's License.

Effective: December 1, 2016

Session law 2016-81
House Bill 289

Money Transmitters Act

This lengthy session law creates Article 16B, the Money Transmitters Act, in G.S. Chapter 53.

New G.S. 53-208.43 is created which prohibits persons, not otherwise exempt from the statute, from engaging in the business of money transmissions, as defined in new G.S. 53-208.42, without first obtaining a license. G.S. 53-208.44 provides a list of persons and entities exempt from the license requirement, including but not limited to: the United States, the State or any of its political subdivisions; banks, credit unions, and savings and loan associations; securities brokers-dealers; those engaged in payroll activities; and debt collectors. New G.S. 53-208.45 – G.S. 53-208.50 establish various rules pertaining to issuance of the license. G.S. 53-208.51 sets forth a list of practices which are prohibited by licensees. These include, but are not limited to: failing to remit money received for transmission; failing to comply with various federal acts and State laws regulating money and its transmission; and engaging in false, deceptive or fraudulent practices. G.S. 53-208.52 – G.S. 53-208.54 set forth specific record keeping and reporting requirements for those engaged in the business of money transmission. G.S. 53-208.55 – G.S. 53-208.57 give certain inspection and disciplinary authority to the Commissioner of Banks of the State of North Carolina. And, new G.S. 53-208.58 makes it a Class 1 misdemeanor, if a specific penalty is not otherwise provided, for a person to knowingly and willfully violate any provision of the Act.

Effective: October 1, 2016

Session Law 2016-87
House Bill 1044

Blue Alert System Established; Amendments to Silver Alert System

New G.S. 143B-1023 establishes the Blue Alert System within the North Carolina Center for Missing Persons. The purpose of the system is to aid in the apprehension of a suspect who kills or inflicts serious bodily injury on a law enforcement officer by providing a statewide system for the rapid dissemination of information concerning the suspect. The Center will rapidly disseminate suspect information when the following criteria are met: (1) a law enforcement officer is killed or suffers serious bodily injury; (2) a law enforcement agency with jurisdiction determines that the suspect poses a threat to the public or other law enforcement personnel, and possess information that may assist in locating the suspect, including information regarding the suspect's vehicle, complete or partial plate information, and a detailed description of the suspect; or an officer is missing while on-duty under circumstances warranting concern for the officer's safety; and (3) the head of a law enforcement agency with jurisdiction recommends issuance of an alert to the Center. The Center will adopt guidelines and procedures for implementation of the System and will provide education and training on its use.

G.S. 143B-1022 is amended to broaden the scope of the Silver Alert System to include not only a missing person with dementia, but also Alzheimer's disease or a disability that requires the person to be protected from potential abuse or other physical harm, neglect, or exploitation.

Effective: July 11, 2016

Session Law 2016-90
House Bill 959

Motor Vehicle Law Amendments

Effective December 1, 2016, G.S. 20-129(e) is amended to require that bicycles being operated at night on a public street, public vehicular area, or public greenway, be equipped with a rear light visible from 300 feet or that the operator of the bicycle wear reflective clothing or a vest visible from this same distance. Currently, rear lamps on bicycles operated at night must be visible from 200 feet and there is not an option allowing reflective clothing in lieu of the rear lamp.

G.S. 20-150(e) (Passing in a no passing zone) is amended to allow the passing of a bicycle or moped traveling in the same direction, as long as the bicycle is not making or signaling that it intends to make a left turn, and the passing vehicle either completely enters the left lane or allows at least 4' of clearance between itself and the bicycle or moped.

G.S. 20-154 is amended so that the provisions in subsections (a1) and (a2) for increased punishments for drivers who fail to properly signal, and thereby cause a motorcycle to leave its travel lane or crash, are also made applicable to bicycles.

A new subsection is added to G.S. 20-66 providing that, effective October 1, 2016, the registration of a vehicle renewed by means of a new registration plate expires at midnight on February 15 of each year.

G.S. 20-57(c) is amended and G.S. 20-176(a1)(2) is repealed eliminating the requirement that an owner sign his/her vehicle registration card.

Definitions for “electric assisted bicycle,” “motor-driven bicycle,” and “moped” are added to G.S. 20-4.01. “Electric assisted bicycle” is a bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 mph. A “motor-driven bicycle” is defined as a vehicle with two or three wheels, a steering handle, one or two saddle seats, pedals, and a motor that cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. Motor-driven bicycles do not include electric assisted bicycles. “Moped” is defined as a vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cc piston displacement and cannot propel the vehicle at a speed greater than 30 mph on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel or a combination of each.

G.S. 20-166.1(e) is amended to provide that at the request of the driver of a motor vehicle involved in an accident or the insuring agent or company, the officer writing the accident report may forward an uncertified report to the insurance agent or company if the officer is satisfied that a certified copy of the report has been requested from DMV and the applicable fee paid.

Amends G.S. 63-96 changing the minimum age to obtain a permit for commercial operation of an unmanned aircraft from 17 to 16.

Effective: July 11, 2016 unless otherwise stated in text above

Session Law 2016-93
House Bill 992

Industrial Hemp Production

Article 50E of G.S. Chapter 106 currently contains provisions that regulate industrial hemp production in North Carolina. New G.S. 106-568.57 makes it a: (1) Class I felony for a person to manufacture, deliver, purchase, etc., marijuana on property used for industrial hemp production; (2) Class 1 misdemeanor for a person to provide the Industrial Hemp Commission with false or misleading information concerning a license application or renewal, inspection, or investigation; and (3) a Class 1 misdemeanor for a person to tamper with or adulterate a lawfully planted industrial hemp crop.

Effective: December 1, 2016

Session Law 2016-94
House Bill 1030

Appropriations Act: Justice Academy Social Media Course for Officers; DMV Authority to Cancel Drivers' Licenses

Requires the North Carolina Justice Academy to develop and make available to law enforcement officers an online training course on using social media, including methods officers can take to protect their personal information.

G.S. 20-15(a) is amended adding the following as grounds for which DMV may cancel a driver's license: (1) the licensee suffers from a physical or mental disability or disease that affects the licensee's ability to safely operate a motor vehicle; and (2) the licensee has failed to submit the medical certificate required under G.S. 20-7(e) and G.S. 20-9(g), which also concerns a licensee with a physical or mental disability or disease.

Effective: July 1, 2016

Session Law 2016-102
House Bill 1021

Sex Offender Location Restrictions

This session law responds to a federal district court case, *Does v. Cooper*, declaring section (a)(2) of G.S. 14-208.18 unconstitutionally broad, and section (a)(3) unconstitutionally vague (For details of ruling, see email from Police Attorney Toni Smith distributed May 23, 2016 by Kammie Michael to all sworn officers).

Section (a)(1) of the statute, which made it unlawful for a registered sex offender to be on the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, childcare centers, nurseries, and playgrounds, remains unchanged. However, the restriction is now only applicable to offenders required to register because they have been convicted of an offense in Article 7B of Chapter 14 (rape and other sex offenses), a similar offense under federal law or the laws of another state, or an offense where the victim was under age 18.

Section (a)(2) of the statute continues to make it unlawful for a registered sex offender to be within 300 feet of a location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subsection (a)(1) that are located in malls, shopping centers, or other property and open to the general public. However, the restriction is now only applicable to offenders required to register because they have been convicted of either: 1) an offense in Article 7B of Chapter 14 (rape and other sex offenses), or a similar offense under federal law or the laws of another state, and a finding has been made that the person presents or may present a danger to children under 18; or 2) an offense where the victim was under age 18.

Section (a)(3) is amended to prohibit certain registered sex offenders from being at any place where minors frequently congregate, including but not limited to, libraries, arcades, amusement parks, recreation parks, and swimming pools, when minors are present. Previously, the statute simply prohibited registered sex offenders from being at any place where minors gather for regularly scheduled educational, recreational, or social programs. In addition, the restriction is now only applicable to those offenders required to register because they have been convicted of an offense in Article 7B of Chapter 14 (rape and other sex offenses), a similar offense under federal law or the laws of another state, or an offense where the victim was under age 18.

Finally, a new section (a)(4) is added to the statute prohibiting certain registered sex offenders from being on the State Fairgrounds while the State Fair is being conducted, on the Western Agricultural Center grounds during the NC Mountain State Fair, or on any other fairgrounds when an agricultural fair is being conducted. The restriction is applicable to offenders required to register because they have been convicted of an offense in Article 7B of Chapter 14 (rape and other sex offenses), a similar offense under federal law or the laws of another state, or an offense where the victim was under age 18.

Effective: September 1, 2016

Session Law 2016-115
House Bill 424

Unlawful Transfer of Custody of a Minor.

New G.S. 14-321.2 makes it unlawful for: (1) a parent to effect or attempt to effect an unlawful transfer of custody of the parent's minor child; (2) a person to accept or attempt to accept custody pursuant to an unlawful transfer of custody of a minor child (except if the person promptly

notifies and makes the child available to law enforcement or child protective services); or (3) a person to advertise, recruit or solicit the unlawful transfer of custody of a minor child, or seek the assistance of another to do so.

“Unlawful transfer of custody” means the transfer of physical custody of a minor child, in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child’s parent, without a court order or other authorization, to a person other than a relative or another person having a substantial relationship with the child. Compensation or other thing of value is not required to qualify as an unlawful transfer. Unlawful transfer does not include: (1) placement of a minor with a prospective adoptive parent in accordance with specified statutes; (2) consent to adoption of a child in accordance with specified statutes; (3) relinquishment of a child in accordance with specified statutes; (4) placement of a child in accordance with specified statutes; (5) temporary transfer of custody of a child to an individual with a prior substantial relationship with the child for a specified period of time due to the needs of the child or the parent’s inability to care for the child; (6) transfer of physical custody of a child to a relative; (7) temporary transfer of custody to a health care provider, educational institution or recreational facility by a parent for a specified period of time due to the needs of the child; (8) a voluntary foster care placement between a parent and county department of social services; or (9) placement of a child with a prospective adoptive parent in substantial compliance with applicable adoption laws of this State or another state. Violation is a Class 1 misdemeanor, or a Class G felony if the commission of the offense results in serious physical injury to the child.

Effective: December 1, 2016