



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Senior Assistant City Attorney

In this issue:

Legislative Summary – Pgs. 1-7



2018 Legislation Affecting Criminal Law and Procedure



Below are summaries of 2018 legislation affecting criminal law and procedure. To obtain the text of the legislation, go to the North Carolina General Assembly's website, www.ncleg.net. Once there, click on "Session Laws" on the far right side of the page and then select "2017–2018 Session" under Browse Session Laws; scroll down to the 2018 session laws.

Session Law 2017-10 **House Bill 325**

Arson

New G.S. 14-67.2 makes it a Class D felony, unless the conduct is covered under another provision of law providing greater punishment, for a person:

- during the commission of a felony
- to knowingly damage any dwelling, structure, building, or conveyance referenced in Article 15 of G.S. Chapter 14 (Arson and Other Burnings)
- by means of fire or explosive
- that results in damages of \$10,000 or more.

Aiding and abetting the offense is also a Class D felony. G.S. 14-69.3 has made it a Class E felony to commit a felony under Article 15 of G.S. Chapter 14 causing serious bodily injury to a firefighter or emergency medical technician. The statute was amended to add law enforcement officers and fire investigators to the statute's coverage.

Effective: December 1, 2018

Session Law 2018-36 **Senate Bill 124**

Disposal of Hemp Oil

New subsection (d) of G.S. 90-94.1 requires an individual who possesses or uses hemp extract to dispose of all residual oil from the extract at a secure collection box managed by a law enforcement agency. There is no criminal penalty for a violation of this subsection.

Effective: December 1, 2018

**Session Law 2018-40
Senate Bill 168**

Arrest Warrant Modifications

G.S. 15A-304(b)(1) is modified to list the following circumstances which should be taken into account by a judicial official when deciding to issue an arrest warrant: failure to appear when previously summoned; facts making it apparent that the person summoned will fail to appear; danger that the person accused will escape; danger that there will be injury to person or property; or the seriousness of the offense.

Subsection(b)(2), which was added last year specifying circumstances in which an issuing official must issue a criminal summons instead of an arrest warrant, is repealed.

The portion of subsection (b)(3), which was added last year, requiring citizens seeking criminal process to put the facts supporting probable cause in a written affidavit, is repealed. However, the subsection is further amended to provide that if the finding of probable cause is based solely on evidence provided by an individual who is not a law enforcement officer, the issuing official must issue a criminal summons instead of an arrest warrant unless: 1. there is corroborating testimony from a law enforcement officer or at least one disinterested witness; 2. obtaining investigation of the alleged offense by law enforcement would constitute a substantial burden to the complainant; or 3. there is substantial evidence of one or more of the circumstances listed in subsection (b)(1) [refer to first paragraph above].

Effective: October 1, 2018

**Session Law 2018-44
Senate Bill 616**

Controlled Substances

Fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP) is added to G.S. 90-90(2). N-phenethyl-4-piperidinone (NPP) is added to G.S. 90-95(d2). MDPV is deleted from G.S. 90-95(h)(3d), and substituted cathinones is added. G.S. 90-95(h)(3e) regarding mephedrone is deleted. G.S. 90-95(h)(4) is amended to cover opioids as well as opium and opiates.

G.S. 90-108(a)(14), which makes it an offense for an employee of a registrant or practitioner to unlawfully divert a controlled substance, is amended by adding registrants and participants. A new subsection (a)(15) is added making it a Class G felony for a person who is not a registrant or practitioner or an employee of a registrant or practitioner to divert a controlled substance. New G.S. 90-108(b)(3) makes it a Class E felony if a person violates subdivision (14) or (15) and intentionally diverts any controlled substance by means of dilution or substitution as those terms are defined in the statute.

New G.S. 90-113.74(k) creates three new offenses involving individuals authorized to access data in the controlled substances reporting system. A person who is convicted of any of the new offenses is permanently barred from accessing the controlled substances reporting system.

- o A person who knowingly and intentionally accesses prescription information in the controlled substances reporting system for an unauthorized purpose is guilty of a Class I felony.
- o A person who knowingly and intentionally discloses or disseminates prescription information from the system for an unauthorized purpose is guilty of a Class I felony.
- o A person who willfully and maliciously obtains, discloses, or disseminates prescription information for an unauthorized purpose and with the intent to use the information for commercial advantage or personal gain or maliciously harm any person is guilty of a Class H felony.

Effective: December 1, 2018

New G.S. 90-113.74E requires the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriff's Education and Training Standards Commission to develop standards and training for diversion investigators and supervisors, new law enforcement positions with created to address the diversion of controlled substances from legitimate channels.

Effective: June 22, 2018

New G.S. 90-107.1 authorizes diversion investigators and supervisors to obtain pharmacy records in connection with an active investigation and establishes procedures for such requests. New G.S. 90-113.74(i) authorizes the Department of Health and Human Services to release data in the controlled substance reporting system to such investigators and supervisors under conditions set forth in the statute.

Effective: July 1, 2019

Session Law 2018-47
Senate Bill 768

Definition of Mental Incapacity for Sexual Assaults

The definition of "mentally incapacitated" in G.S. 14-27.20, the definitions section for rape and other sexual offenses, is amended to specify that a poisonous or controlled substance provided to a victim without his or her knowledge or consent may render the victim mentally incapacitated.

Effective: December 1, 2018

Session Law 2018-67
House Bill 969

Offenses by Prisoners

New G.S. 14-254.5 adds a definitions section to Article 33 Prison Breach and Prisons. An employee is defined as any person hired or contracted to work for the State or a local government. Prisoner is defined as any person in the custody of 1. the Division of Adult Correction and Juvenile Justice of the Department of Public Safety; 2. any law enforcement officer, or 3. any local confinement facility.

The act broadens G.S. 14-258.4, which has made it a Class F felony for a prisoner to throw, emit, or cause to be used as a projectile bodily fluids or excrement at an employee, to include such conduct with an unknown substance. A new subsection (b) is added to the statute to make it a Class I felony for a prisoner to knowingly and willfully expose genitalia to an employee while the employee is in the performance of his or her duties.

G.S. 14-258, which dealt with conveying messages and weapons to or trading with prisoners, is amended. Under the revised statute, it is a Class H felony for a person to sell, trade, convey, or provide to a prisoner 1. an article forbidden by prison rules, or 2. a letter, oral message, weapon, tool, good, clothing, device, or instrument to effect an escape, or aid in an assault or insurrection. A violation involving the items in 2. is a Class F felony if an escape, assault, or insurrection occurs. The revised statute also makes it a Class H felony for a prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an escape or aid in an assault or insurrection.

Effective: December 1, 2018

New G.S. 14-258.7 requires the Department of Public Safety to provide a report, by March 15 of each year, to the General Assembly regarding assaults on employees by prisoners. It also requires reports by that date by the Conference of District Attorneys and Administrative Office of the Courts regarding such violations.

Amended G.S. 143B-929 authorizes the Information Sharing and Analysis Center of the State Bureau of Investigation to analyze information related to any threat of violence to the safety of an individual associated with an educational property or place of worship. The Center shall notify local law enforcement agencies if the threat is deemed credible and the location of the threat or the suspect is ascertained.

Effective June 25, 2018

Session Law 2018-68 House Bill 776

Juvenile Victims of Human Trafficking

New G.S. 14-43.15 requires that a minor victim of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or 14-43.13 (sexual servitude) be alleged to be abused and neglected under G.S. Chapter 7B.

Effective: October 1, 2018

Session Law 2018-70
House Bill 945

Tracking of Sexual Assault Evidence Collection Kits

New G.S. 114-65 establishes the Statewide Sexual Assault Evidence Collection Kit Tracking System in the State Crime Lab. The System requires that all sexual assault evidence collection kits purchased or distributed on or after October 1, 2018, be trackable and comply with the requirements of the System. All medical providers, law enforcement agencies, forensic laboratories, and others having custody or use of any such kit must participate in and comply with the new System. Victims should be able to track the location of the kit and determine whether testing of the kit has been completed. Previously untested kits must be entered into the System in compliance with System protocols. Beginning October 1, 2019, the Director of the State Crime Lab must report to the General Assembly on, among other things, the number of tracking-enabled kits shipped, used, submitted for testing, and tested, as well as efforts to track and test previously untested kits. The Secretary of the Department of Public Safety must convene a working group to make recommendations on, among other things, the testing of untested kits and testing of kits in the future. Findings and recommendations of the working group are due to the General Assembly by December 1, 2018.

Effective: June 25, 2018

Session Law 2018-72
House Bill 670

Threats of Mass Violence at Schools and Places of Worship

New G.S. 14-277.6 makes it a Class H felony for a person to:

- by any means of communication
- to any person or group of people
- threaten to commit an act of mass violence as defined in G.S. 14-277.5
- on educational property or at a curricular or extracurricular activity sponsored by a school as defined in G.S. 14-277.5.

New G.S. 14-277.7 makes it a Class H felony for a person to:

- by any means of communication
- to any person or group of people
- threaten to commit an act of mass violence as defined in G.S. 14-277.5
- at a place of worship as defined in the new statute.

New G.S. 15A-534.7 requires that pretrial release conditions be determined by a judge in the first 48 hours after arrest of a person for violation of either of the two new statutes. If the judge determines that immediate release of the person will pose a danger of injury to people and that the execution of an appearance bond will not reasonably assure that injury will not occur, the

judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release. The judge may impose stay-away conditions in addition to a secured bond. If a judge has not acted within 48, a magistrate has the authority to set conditions as provided in G.S. 15A-534.7.

Effective: December 1, 2018

**Session Law 2018-75
Senate Bill 162**

Human Trafficking

A new subsection (6) is added to G.S. 14-43.10(a) to define “victim” as a person subjected to the practices set forth in G.S. 14-43.11 (Human Trafficking), 14-43.12 (Involuntary Servitude), or 14-43.13 (Sexual Servitude).

Effective: June 15, 2018

New G.S. 14-43.15 makes it an affirmative defense to a prosecution under Chapter 14 Article 10A (Human Trafficking) that the person charged with the offense was a victim at the time of the offense and was coerced or deceived into committing the offense as a direct result of the person’s status as a victim

New G.S. 14-43.16 makes confidential the name, address, and other information that reasonably could be expected to lead directly to the identity of any victim, alleged victim, or family member (as defined in the statute) of a victim. The statute provides some exceptions, such as use in a law enforcement investigation or criminal prosecution. A knowing violation of the confidentiality requirement is a Class 3 misdemeanor.

Amended G.S. 14-43.20 allows the judge to order as part of restitution any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim in recovering from any injuries or loss resulting from an offense committed under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. The amended statute also provides that if a judge finds that the victim to whom restitution is due is unavailable to claim the restitution award, the judge is to order that the restitution be paid to the clerk of superior court in the county in which the conviction for the offense occurred. If the victim does not claim the restitution award within two years, the clerk is to remit the restitution proceeds to the Crime Victims Compensation Fund under G.S. 15B-23.

The definition of “abused juvenile” found in G.S. 7B-101 is amended to include any juvenile less than 18 years of age who is a victim of an offense under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, regardless of the relationship between the victim and the perpetrator.

Effective: December 1, 2018

Session Law 2018-78
House Bill 529

Abuse or Mutilation of Corpse in Person's Custody

New G.S. 90-210.25(f)(2) makes it a Class 2 misdemeanor to knowingly and willfully abuse or mutilate a dead human body in the person's custody.

Effective: December 1, 2018

Session Law 2018-87
House Bill 388

Mutual Assistance

Amended G.S. 160A-288 and G.S. 160A-288.2 allows the head of a law enforcement agency to provide assistance to another local or State law enforcement agency unless prohibited or limited by a city or county ordinance. Previously, the governing body of the city or county had to have officially bestowed such authority upon the head of the law enforcement agency.

Effective: June 25, 2018

Session Law 2018-100
House Bill 500

Raffles

G.S. 14-309.6, a section within the statutes governing bingos and raffles, is amended to define a nonprofit organization as an organization recognized as tax-exempt by the North Carolina Department of Revenue and as any bona fide branch, chapter, or affiliate. Amended G.S. 14-309.15 allows any regional or county chapter of a nonprofit organization to conduct a raffle independently of its parent organization, increases the number of raffles that a nonprofit organization may hold from two to four per year, and increases the prize that a nonprofit organization may offer from \$125,000 to \$250,000. Amended G.S. 18B-308 allows the sale and consumption of alcohol at a raffle; the prohibition remains in effect for bingo.

Effective: October 1, 2018

New G.S. 18B-903A authorizes the reissuance of a limited special occasion permit or a special one-time permit to a nonprofit organization as provided in that section and makes it a Class 1 misdemeanor to knowingly make a false statement in an application for reissuance of the permit.

Effective: December 1, 2018