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Police Law Bulletin

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LEGISLATIVE UPDATE

This Police Law Bulletin summarizes bills enacted into law this Session which may be of interest to municipal police officers. For specific details about the legislative bills summarized below, please review the actual legislation on the General Assembly's website: www.ncleg.net.

House Bill 84
Session Law 2021-115

Sex Offender Premises Restrictions

This bill amends G.S. 14-208.18 making registered sex offenders convicted of first, second, or third degree sexual exploitation of a minor (or substantially similar offenses under federal law or in another state) subject to the premises restrictions of G.S. 14-208.18(a) even if the victim in the case was not a minor (such as an undercover law enforcement officer posing as a minor). Currently, a sex offender required to register for a sexual exploitation offense is not subject to the premises restrictions if the victim of the crime was 18 or older at the time of the offense.

G.S. 15A-145(a1) is amended to clarify that expunctions are not allowed for offenses requiring registration as a sex offender.

G.S. 14-208.16(a) is amended to clarify that when applying the restriction prohibiting a registered sex offender from residing within 1000 feet of a school or child care center, distance shall be measured from any point on the property lines.

Effective: December 1, 2021

House Bill 238
Session Law 2021-68

Possession of Skimming Device Prohibited

G.S. 14-113.8 is amended by adding the following definition for a skimming device: a self-contained device that (1) is designed to read and store in the device's internal memory

information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a financial transaction card or from another device that directly reads the information from a financial transaction card; and (2) that is incapable of processing the financial transaction card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

G.S. 14-113.9(a) is amended to add the act of knowingly possessing, selling or delivering a skimming device into the current Class I felony offense of financial card transaction theft. This prohibition does not apply to any officer, agent or employee of the following who are discharging their official duties: (1) a law enforcement agency; (2) a State or federal court; (3) an agency or department of the State, local or federal government; or (4) a financial or retail security investigator employed by a merchant.

Effective: December 1, 2021

House Bill 436
Session Law 2021-136

Law Enforcement Mental Health

The provisions of this bill are identical to provisions found in Senate Bill 300, Criminal Justice Reform. For a summary and effective date, refer to the section below titled Senate Bill 300, Session Law 2021-138, Criminal Justice Reform, subsection titled *Law Enforcement Entry Requirements, On-Going Requirements, and Physical Fitness Study*.

House Bill 536
Session Law 2021-137

Duty to Intervene and Giglio Reporting Requirements

The provisions of this bill are identical to provisions found in Senate Bill 300, Criminal Justice Reform. For a summary of the duty to intervene provisions and its effective date, refer to the section below titled Senate Bill 300, Session Law 2021-138, Criminal Justice Reform, subsection titled *Duty to Intervene In and Report Excessive Force.* For a summary of the Giglio reporting provisions and its effective date, refer to the section below titled Senate Bill 300, Session Law 2021-138, Criminal Justice Reform, subsection titled *Report Requirement Related to Giglio Material.*

House Bill 692
Session Law 2021-128

Restrict Certain Vehicle Modifications

Amended G.S. 20- prohibits operating a private passenger automobile on any highway or public vehicular area if the suspension, frame, or chassis of the automobile has been modified so that the height of the front fender is four or more inches greater than the height of the rear fender. This does not apply to private passenger automobiles modified in such a manner that are not operated on any highway or public vehicular area (such as a trailered show car).

Currently, the manufacturers specified height of any motor vehicle may not be modified, altered or changed to elevate or lower the motor vehicle (in either the front or back of the motor vehicle) more than six inches without the prior written approval of the Commissioner of Motor Vehicles.

Effective: December 1, 2021

House Bill 743
Session Law 2021-36

Increased Punishment for Altering or Destroying ID Mark
This bill amends G.S. 14-160.1 (c) and 14-401.4 (d) to increase the punishment for altering, destroying, defacing or removing a serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any item of personal property or from any farm machinery, farm equipment or farm apparatus, valued at $1000 or more, from a Class 1 misdemeanor to a Class H felony. The offenses remain a Class 1 misdemeanor if the property was valued at less than $1,000.

Effective: December 1, 2021

House Bill 761
Session Law 2021-167

Police Vehicle and Equipment Protection Act
Currently, G.S. 14-56 makes it a Class I felony to break or enter into any railroad car, motor vehicle, trailer, aircraft, boat or other watercraft with the intent to commit a felony or larceny therein. This bill increases the penalty to a Class He felony if the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States, and the person knew or reasonably should have known that it was owned by any of these entities.

The bill also creates new G.S. 14-72.9 making it a Class H felony to commit larceny of law enforcement equipment from a law enforcement vehicle if the person knew, or reasonably should have known, that the vehicle was a law enforcement vehicle and that the property was law enforcement equipment. It is a Class G felony if the law enforcement equipment is valued in excess of $1,000. Law enforcement equipment is defined as any equipment owned or operated by a law enforcement agency and used by law enforcement agencies to conduct law enforcement operations, including firearms and any other type of weapon, ammunition, radios, computers, handcuffs and other restraints, phones, cell site simulators, light bars and sirens.

Effective: December 1, 2021

Senate Bill 99
Session Law 2021-154

Theft of Catalytic Converters

G.S. 14-72.8 is amended to make theft of a catalytic converter a Class I felony. Currently, there is no provision in the law specifically pertaining to the theft of catalytic converters. Further, the amendment creates a presumption of felony larceny of a catalytic converter when a person is in possession of a catalytic converter that has been removed from a motor vehicle, unless the person is: 1) an employee or agent of a company, or an individual, acting in their official duties for a motor vehicle dealer or repair shop, secondary metals recycler or salvage yard; or 2) an individual who possesses vehicle registration documentation indicating that the catalytic converter in the individual's possession is the result of a replacement of a catalytic converter from a vehicle registered in that person's name.

G.S. 66-421(b) is amended to require secondary metals recyclers to maintain an electronic record of all purchase transactions of regulated metals, and requires the recycler to maintain a copy of all documentation provided to and relied upon by the recycler in determining the status of the seller of a catalytic converter. Currently, the law requires secondary metals recyclers to maintain a purchase and transaction record, but it does not specify the format of that record.

In addition to any other punishment, persons who violate the law governing the sale and purchase of catalytic converters are punishable by a mandatory $1,000 fine per violation.

Effective: December 1, 2021

Senate Bill 105
Session Law 2021-180

Appropriations Act

This year's budget bill contains many provisions that impact the criminal justice system, with varying effective dates. Provisions of particular interest to the criminal justice community include the following:

The bill amends G.S. 115C-105.57 to expand the powers and duties of the Center for Safer Schools (CSC) of the North Carolina Department of Public Instruction. Under these expanded duties the CSC will provide training and resources for school personnel and first responders on: (1) responsibilities and best practices of school resource officers; (2) youth mental health, including applicable policies and plans adopted by the State Board of Education; (3) threat assessment; (4) active-shooter drills and scenarios; and (5) incident de-escalation.

The expanded powers and duties of the CSC also include: (1) assisting law enforcement officers assigned to schools and their agencies in active shooter response drills and other pertinent school safety-related training; (2) collaborating with the North Carolina Justice Academy, the North Carolina Sheriffs' Education and Training Standards Commission, and the North Carolina Criminal Justice Education and Training Standards Commission to establish and maintain updated training curriculum for school resource officers; and (3) coordinating grants for school resource officers in elementary and middle schools and ensuring that training requirements for school resource officers funded by those grants are met.

Finally, the bill requires local law enforcement agencies, the North Carolina Department of Public Safety, and the North Carolina Justice Academy to provide information, upon request, to the CSC so its duties may be carried out. The bill does not specify or limit what information may be obtained by the CSC.

Effective: November 18, 2021

The bill amends G.S. 15A-1225.3 to allow remote testimony in district court by an analyst and any person in the chain of custody regarding the results of a forensic test if the State: (1) has provided a copy of the report to the defendant's attorney of record, or to the defendant if unrepresented; and (2) has notified the defendant's attorney of record, or the defendant if unrepresented, at least 15 business days before the proceeding of the State's intent to use remote testimony to introduce the results of forensic testing. Neither the defendant nor the defendant's attorney can object to the use of remote testimony in this context if given proper notice by the State.

Currently, in both district and superior court, only analysts are permitted to provide remote testimony of the results of forensic testing, provided the State follows proper notice procedures, provides a copy of the report and the defendant fails to object. The bill does not allow remote testimony to establish chain of custody for forensic evidence in superior court or juvenile delinquency proceedings.

The bill also amends G.S. 20-139.1 to provide the same authority for remote testimony in district court by a chemical analyst and each person in the associated chain of custody regarding the results of a chemical analysis of blood or urine.

Currently, if the State follows proper notice procedures, provides a copy of the report and the defendant fails to object, only analysts are permitted to provide remote testimony of the results of a chemical analysis of blood or urine. The bill does not allow remote testimony to establish chain of custody for analyzed blood or urine in superior court.

Effective: January 1, 2022

The bill enacts new G.S. 143B-907 to prohibit any State agency or political subdivision of the State (such as a city or county) from creating or maintaining a database that compiles and makes available to the public information or data regarding disciplinary actions taken against law enforcement officers or critical incidents involving law enforcement officers unless the General Assembly enacts a law specifically authorizing a State agency or political subdivision of the State to create or maintain such a database.

Effective: November 18, 2021

Senate Bill 183
Session Law 2021-182

Ignition Interlocks

This bill makes various changes to the laws governing ignition interlock devices. Notably, the bill provides that where an individual has been issued a limited driving privilege requiring the individual's designated motor vehicle to be equipped with an ignition interlock device, the additional driving purpose and operational hour restrictions for those individuals throughout the statute do not apply when the person is operating their designated vehicle equipped with a functioning ignition interlock system. Currently, individuals convicted of an impaired driving offense with an alcohol concentration of 0.15 or higher at the time of the offense who are issued limited driving privileges may only drive for various essential purposes, such as to and from work, and are prohibited from driving outside a certain timeframe except when related to emergency medical care.

Also, the bill requires a judge, in issuing a limited driving privilege to a person whose license was revoked for a conviction of driving while impaired (DWI) and whose BAC at the time of the offense was 0.15 or more, to include a requirement that the vehicle(s) designated by the person be equipped with an ignition interlock system set to prohibit driving with an alcohol concentration of greater than 0.02.
Currently, the ignition interlock system must be set to prohibit driving if the alcohol concentration is greater than 0.00 for this category of limited driving privilege. Thus, the bill lessens the restrictions on the above category of DWI offenders by allowing this type of DWI offender to drive a motor vehicle on a public road or highway with up to a 0.02 BAC.

Effective: June 1, 2022

Senate Bill 207
Session Law 2021-123

Raise The Age Changes

This bill makes various amendments to the juvenile code in order to further implement the Juvenile Justice Reinvestment Act (Raise the Age) based on recommendations of the Juvenile Jurisdiction Advisory Committee. Of most direct significance to law enforcement are amendments modifying the minimum age of delinquent and undisciplined juveniles. G.S. 17B-1501(7) is amended so that a delinquent juvenile is:

- Any juvenile, 8 or 9 years of age, who commits a Class A, B1, B2, C, D, E, F or G felony;
- Any juvenile, 8 or 9 years of age, who commits a crime or infraction, including violation of the motor vehicle laws, and who has previously been adjudicated delinquent;
- Any juvenile, 10-15 years of age (currently the age 6-15) who commits a crime or infraction, including violation of the motor vehicle laws; or
- Any juvenile, 16 or 17 years of age, who commits a crime or infraction, excluding violation of the motor vehicle laws.

G.S. 17B-1701 (27) is amended so that an undisciplined juvenile is:

- A juvenile, 10-15 years of age (currently the age is 6-15), who is unlawfully absent from school, or regularly disobedient to and beyond the disciplinary control of their parent, guardian or custodian, or is regularly found in places where it is unlawful for a juvenile to be, or has run away from home for a period of more than 24 hours; or

- A juvenile, 16 or 17 years of age, who is regularly disobedient to and beyond the disciplinary control of their parent, guardian or custodian, or is regularly found in places where it is unlawful for a juvenile to be, or has run away from home for a period of more than 24 hours.

A new subsection (27b) is added to G.S. 17B-1501 defining a vulnerable juvenile as any juvenile, 6-9 years of age, who commits a crime or infraction, including violation of the motor vehicle laws, but is not a delinquent juvenile as that term is defined.

In sum, under current law, a child who is at least 6 years of age may be considered a delinquent or undisciplined juvenile. After the bill's effective date:

- a child generally will have to be at least 10 years of age to be considered delinquent or undisciplined;
- 8 and 9 year olds may be considered delinquent, but only if they are believed to have committed:
    - a Class A through G felony, or
    - some other crime or infraction (including motor vehicle violations) and have been previously adjudicated delinquent;
- 6-7 year olds, and 8-9 year olds who no longer meet the definition of undisciplined, but who are believed to have committed a crime or infraction (including violation of the motor vehicle laws) may qualify as vulnerable juveniles. Complaints of vulnerable juveniles will be handled with a juvenile consultation (i.e. services are provided to the juvenile and the juvenile's parent, guardian or custodian).

Effective: December 1, 2021

Senate Bill 300
Session Law 2021-138

Criminal Justice Reform

Decertification Statewide Database
G.S. 17C-14 is created requiring the North Carolina Criminal Justice Education and Training Standards Commission to develop and maintain on their websites a statewide database, accessible to the public, that contains all revocations and suspensions of law enforcement certifications by the Commission.

G.S. 17E-14 is created requiring the North Carolina Sheriffs' Education and Training Standards Commission to develop and maintain on their websites a statewide database, accessible to the public, that contains all revocations and suspensions of justice officer certifications by the Commission.

Effective: October 1, 2021

Criminal Record Checks

New G.S. 143B-972.1 requires the SBI provide to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission the criminal history of any person who applies for certification or is certified, as a criminal justice officer or justice officer, from the State and National Repositories of Criminal Histories. Each agency employing certified criminal justice officers or justice officers shall provide to the SBI the fingerprints of any person who applies for certification and certified officers, as well as any other information required by the SBI.

The SBI shall enroll each set of fingerprints in the Statewide Automated Fingerprint Identification System (SAFIS), the Federal Bureau of Investigation's Next Generation Identification (NGI) System, and the Criminal Justice Record of Arrest and Prosecution Background (Rap Back) Service. The SBI must notify the certifying Commission of any subsequent arrest of an individual identified through the Rap Back Service.

Within 15 days of receiving notification by either Commission that an individual whose fingerprints have been stored in SAFIS pursuant to this statute has withdrawn their application for certification or has separated from employment, the SBI shall remove the individual's fingerprints from SAFIS and forward a request to the FBI to remove the fingerprints from the NGI System and the Criminal Justice Rap Back Service.

Effective: January 1, 2023

Critical Incident Statewide Database (IA)
New G.S. 17C-15 requires the Criminal Justice Standards Division to develop and maintain a statewide database for use by law enforcement agencies that tracks all critical incident data of law enforcement officers in North Carolina. New G.S. 17C-2(3a) defines "critical incident" as an incident involving any use of force by a law enforcement officer that results in death or serious bodily injury. All law enforcement agencies must provide any information requested by the Division to maintain the database. Information collected which is confidential under State or federal law remains confidential. A law enforcement officer who is reported as having been involved in a critical incident who disputes being involved has a right, prior to being placed in the database, to request a hearing in superior court for a determination of whether the officer's involvement was properly placed in the database.

New G.S. 17E-2(4) and G.S. 17E-15 creates the same requirements for the Justice Officers' Standards Division.

Effective: October 1, 2021

Report Requirement Related to Giglio Material
New G.S. 17C-16 requires any law enforcement officer or any person who has received a conditional offer of employment, who has been notified that he or she may not be called to testify at trial based on bias, interest, or lack of credibility, to report and provide a copy of that notification to both the Criminal Justice Standards Division and the person's agency head within 30 days of receiving the notification. This requirement only applies if notification is by one of the following methods: 1) In writing by a superior court judge, district court judge, federal judge,

district attorney, assistant district attorney, United States attorney, assistant United States attorney, or the person's agency head; or 2) In open court by a superior court judge, district court judge, or federal judge, and documented in a written order. The report shall be in writing and state who provided the notification.

An agency head that receives a report that a person in the agency has been notified that they may not be called to testify at trial must also report the notification to the Criminal Justice Standards Division in writing within 30 days of the agency head's receipt of the report.

Further, a superior court judge, district court judge, federal judge, district attorney, assistant district attorney, United States attorney, or assistant United States attorney who notifies a person that they may not be called to testify for the reasons set forth above, shall also report that notification to the Criminal Justice Standards Division within 30 days of the notification.

If a person is required to report the foregoing notification to the Criminal Justice Standards Division, and the Division then transfers the person's certification to another agency, the Division shall provide written notification to both the head of the new agency and the district attorney in the prosecutorial district where the agency is located.

If any person required to report to the Division, pursuant to this statute, is subsequently informed in writing that the notification has been rescinded, the person shall provide the Division with a copy of that document.

Any person who receives a notification that may meet the aforementioned reporting requirement may apply for a hearing in superior court. The hearing is limited to reviewing whether: 1) a person who is certified by the Commission or has received a conditional offer of employment; 2) has been notified in writing by a superior court judge, district court judge, federal judge, district attorney, assistant district attorney United States attorney, or assistant United States attorney; or notified in open court by a superior court judge, district court judge, or federal judge, and documented in a written order; and 3) that notification states that the person may not be called to testify at trial based on bias, interest or lack of credibility. The person must provide notice of the hearing to the Division. One extension of 15 days will be added to the 30-day reporting requirement if notice of a hearing is received.

Reports and notifications made pursuant to this statute are not a public record.

New G.S. 17E-16 creates the same requirements applicable to persons certified by the Justice Officers' Standards Division.

Effective: October 1, 2021 and applies to notifications received prior to, on, or after that date

Transportation of Involuntary Commitment Respondents

Amended G.S. 122C-251(f) allows a judicial official to authorize a health care provider of a respondent to transport a respondent for involuntary commitment proceedings, if the health care provider requests to do so, and danger to the health care provider is not substantial.

Effective: October 1, 2021

Law Enforcement Entry Requirements, On-Going Requirements, and Physical Fitness Study
G.S. 17C-6(a) and G.S. 17E-4(a) are amended to allow the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, respectively, to establish minimum educational and training standards that must be met for entry-level employment as well as in-service training, to develop knowledge and increase awareness of effective mental health and wellness strategies for officers. In-service training standards shall include 2-hours of training on this issue every 3 years.

G.S. 17C-10(c) and G.S. 17E-7(c) are amended to require the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, respectively, to require the administration of a psychological screening examination, including an in-person interview conducted by a licensed psychologist, to determine the individual's psychological suitability to properly fulfill the duties of a criminal justice officer. If an in-person interview is not practical, the evaluation may be virtual as long as both audio and video allow for a professional clinical evaluation. The psychological screening must be given prior to initial certification, or prior to the individual performing any action requiring certification by the respective Commission.

Effective: January 1, 2022

The bill also provides that the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall jointly study the benefits, if any, of requiring physical fitness testing throughout the career of a law enforcement officer, including studying whether that testing, if required, should be incrementally adjusted based upon age. The Commissions must report to the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 31, 2022.

Effective: September 2, 2021

Development of Early Warning Systems
New G.S. 17A-10 requires every agency that employs personnel certified by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission to develop and implement an early warning system to document and track the actions and behaviors of law enforcement officers for the purpose of intervening and improving performance. At a minimum, the early warning system shall include the following information: 1) instances of the discharge of a firearm; 2) instances of use of force; 3) vehicle collisions; and 4) citizen complaints. Information collected under this statute that is confidential under State or federal law remains confidential.

Effective: December 1, 2021

Best Practices Recruiting Guide

Section 9 of the bill requires the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to jointly develop a best practices guide to help law enforcement agencies recruit and retain a diverse workforce. The Commissions shall report to the Joint Legislative Oversight Committee on Justice and Public safety no later than April 1, 2022.

Effective: September 2, 2021

Investigations of Officer-Involved Deaths
G.S. 143B-919 is amended to allow the Governor to request an investigation by the SBI into any death resulting from an officer's use of force, or any death that occurs while the individual is in the custody of the Department of Public Safety, a State prison, a county jail, or a local confinement facility.

Effective: October 1, 2021

Mandatory In-Service Training
Amended G.S. 17C-6(a) and G.S. 17E-4(a) requires the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, respectively, to add the following topics to their in-service training:

- Ethics
- Mental health for criminal justice officers
- Community policing
- Minority sensitivity
- Use of force
- Duty to intervene and report

Effective: January 1, 2022

Enforcement of Ordinances
Amended G.S. 160A-175 provides that, except for the types of ordinances listed in the statute, violation of a city ordinance may be a misdemeanor or infraction only if the city specifies such in the ordinance. Previously, unless the ordinance stated otherwise, city ordinance violations were, by default, a class 3 misdemeanor, and those regulating the parking or operation of vehicles were infractions. The amended statute lists several types of ordinances for which a criminal penalty may not be imposed, but they are of a nature which were not generally enforced locally by the police, such as ordinances adopted pursuant to G.S. 160A-193.1, Stream-clearing programs; any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc; any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis; any ordinance regulating trees; etc.

G.S. 153A-123 was also amended applying the same provisions to county ordinances.

Amended G.S. 14-4 provides that if violation of a local ordinance is a class 3 misdemeanor, no person may be found guilty if, when tried for the violation, the person produces proof of: 1) no

new alleged violations of the ordinance within 30 days from the date of the initial alleged violation; or 2) a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the ordinance.

Effective: December 1, 2021

Duty to Intervene In and Report Excessive Force
G.S. 15A-401 is amended to require an officer, who has a reasonable opportunity to do so, to attempt to intervene to prevent the use of excessive force, if the officer observes another officer use force against an individual that the observing officer reasonably believes exceeds the amount of force authorized by law. In addition, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report the suspected unauthorized use of force to a superior officer. If the head of the agency was involved or present during the suspected unauthorized use of force, the observing officer shall make the report to the highest ranking officer of the agency who was not involved in or present during the use of force.

Effective: December 1, 2021

Protection for Law Enforcement Officers
G.S. 14-223, Resisting Officers, is amended to make it a Class I felony to willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge an official duty, if the resistance, delay or obstruction proximately causes serious injury to the officer. The offense is a Class F felony if the resistance, delay or obstruction proximately causes serious bodily injury to the officer. Serious bodily injury is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. Currently, any charge of resisting an officer is a Class 2 misdemeanor.

Effective: December 1, 2021

Disclosure of Body-Worn Camera Recordings Related to Death or Serious Bodily Injury
Currently, G.S. 132-1.4A allows a person whose voice or image appears in a law enforcement recording, or their personal representative as that term is defined in the statute, to make a written request to the head of the law enforcement agency to view those portions of the recording in which their voice or image appears. If the head of the law enforcement agency denies the request, the individual seeking disclosure may petition the superior court for an ordering directing disclosure. Otherwise, an order of the court was only required if a person sought release (i.e. a copy) of the recording.

Amended G.S. 132-1.4A adds several new subsections requiring a court order to disclose a law enforcement recording that depicts death or serious bodily injury. The Administrative Office of the Courts is tasked with developing a form which law enforcement must make available to individuals seeking disclosure of this type of recording. The individual seeking disclosure must submit a signed and notarized copy of the form to the head of the law enforcement agency.

Persons authorized to receive disclosure essentially remains the same. It is limited to persons whose voice or image appears in the recording or his/her personal representative. No later than 3 business days from receipt of the notarized form, the law enforcement agency must file a petition in superior court for issuance of an order regarding disclosure of the recording AND deliver a copy of the petition and the recording to the senior resident superior court judge (or his/her designee). The court will conduct an in-camera review of the recording and must enter an order within 7 business days of the filing of the petition ordering that the recording be: immediately disclosed without editing or redaction; immediately disclosed with editing or redaction; disclosed at a later date, with or without editing or redaction; or not disclosed. The statute makes it a Class 1 misdemeanor for any person to willfully record, copy or attempt to record or copy a recording disclosed pursuant to this new subsection, and makes it a Class I felony to knowingly disseminate such a recording.

Effective December 1, 2021

Senate Bill 321
Session Law 2021-155

Amendments to North Carolina Controlled Substances Act

This bill made various changes to North Carolina's controlled substances statutes, including:

G.S. 90-97 is amended to refine the term "isomer" to mean the optical isomer, unless otherwise specified. Currently, the term means any type of isomer, including structural, geometric, or optical isomers, and stereoisomers. The definition of "narcotic drug" is also modified so that the term includes cocaine and any isomer whether optical or geometric.

G.S. 90-89 is amended to:

- add the following substances to the Schedule I opiates: 1) Isopropyl-U-47700, 2) U-51754, 3) U-48800, 4) Isotonitazene, 5) Metonitazene, and 6) Brorphine;
- specify that the isomers of levophenacyclmorphan, included as a Schedule I opiate, include optical and geometric isomers;
- provide that fentanyl derivatives included in Schedule I controlled substances include any compound as currently described in the statute unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the U.S. Food and Drug Administration;
- specify that the opium derivatives and hallucinogenic substances currently included in the Schedule include the derivatives' or substances' optical, positional, or geometric isomer;
- add the following substances to the Schedule I hallucinogenic substances: 1) substituted tryptamines, and 2) substituted phenylcyclohexylamines;
- add the following substances to the Schedule I systemic depressants: 1) clonazolam, 2) flualprazolam, and 3) flubromazolam;
- specify that the isomers of the following Schedule I controlled substances include optical, positional, or geometric isomers: mephedrone, MDPV, and substituted cathinones (all of which are Schedule I stimulants) and NBOMe compounds; and

- add the following substances to Schedule I controlled substances: 1) substituted phenethylamines, and 2) N-Benzyl Phenethylamines.

G.S. 90-90 is amended to:

- specify that cocaine includes any isomer chemically equivalent or identical whether optical or geometric; and
- add Norfentanyl to the opiates or opioids included in Schedule II controlled substances.

G.S. 90-91 is amended to provide that Schedule III controlled substances include any isomer of the substance, whether optical, positional or geometric.

G.S. 90-92 is amended to:

- add the following substances to the Schedule IV depressants: 1) desalkylflurazepam, 2) diclazepam, and 3) designer benzodiazepines;
- provide that the isomers of fenfluramine include optical, positional, or geometric isomers.

G.S. 90-95 is amended to make possession of fentanyl or carfentanil or any salt, isomer, compound, or derivative thereof, or the chemical equivalent, a Class I felony. Currently, simple possession of fentanyl or carfentanil is a Class 1 misdemeanor.

G.S. 90-95 is amended to clarify that the felony offense of trafficking cocaine includes isomers of cocaine whether optical or geometric.

Effective: December 1, 2021

Senate Bill 605
Session Law 2021-78

Increased Punishment for Timber Larceny

This bill amends and retitles the criminal offense of cutting, injuring, or removing another's timber, G.S. 14-135. A person is guilty of the new offense of "Larceny of timber" if the person: (1) knowingly and willfully cuts down, injures, or removes any timber owned by another, without the land owner's or timber owner's consent, or without a lawful easement running with the land; or (2) buys timber directly from a timber owner but does not make payment in full by the date specified in the written sales agreement; or when there is no agreement, 60 days from the date the buyer removes the timber from the property. There are several exceptions to the offense, such as a good faith belief that the owner consented, and a good faith belief that the timber was on a utility easement and the action taken was necessary to remove a tree hazard.

Currently, cutting, injuring, or removing another's timber is punishable as a Class H felony if the value of the timber exceeds $1,000, and as a Class 1 misdemeanor if the value is less than $1,000. The new offense is a Class G felony and requires an order for the defendant to make restitution to the timber owner.

Effective: December 1, 2021