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Sponsors:

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March 27, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE USE OF MOTIONS FOR APPROPRIATE RELIEF; TO CLARIFY THE DEFINITION OF "FELONY OFFENSE" FOR PURPOSES OF THE HABITUAL FELON LAW AND TO REMOVE THE SUNSET ON DRIVERS LICENSE ELIGIBILITY FOR PERSONS CONVICTED OF HABITUAL IMPAIRED DRIVING; TO INCLUDE BREAKING AND ENTERING WITH THE INTENT TO TERRORIZE AS A HABITUAL BREAKING AND ENTERING STATUS OFFENSE; TO CLARIFY THAT WHEN A PERSON IS CHARGED WITH AN OFFENSE WHICH REQUIRES MANDATORY FINGERPRINTING, FINGERPRINTING WILL BE ORDERED BY THE COURT IF THE OFFENDER WAS NOT ARRESTED AND FINGERPRINTED AT THE TIME OF THE OFFENSE; TO PROVIDE THAT A PRIVATE CITIZEN'S SHOWING OF PROBABLE CAUSE TO THE MAGISTRATE SHALL INCLUDE SUFFICIENT INFORMATION SUPPORTED BY OATH OR AFFIRMATION THAT A CRIME HAS OCCURRED AND SHALL ISSUE AS A SUMMONS UNLESS A SUBSTANTIAL LIKELIHOOD EXISTS THAT THE DEFENDANT WILL NOT RESPOND TO A SUMMONS; AND TO AMEND THE SHERIFF'S SUPPLEMENTAL PENSION FUND.

The General Assembly of North Carolina enacts:

PART I. MOTIONS FOR APPROPRIATE RELIEF

SECTION 1.(a) G.S. 15A-1413(d) reads as rewritten:

"(d) All motions for appropriate relief filed in superior court shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, including disclosure of expert witness information described in G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the motion, or other appropriate actions.

All motions for appropriate relief filed in district court shall, when filed, be referred to the chief district court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions."



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1 **SECTION 1.(b)** G.S. 15A-1420(b1) reads as rewritten:

2 "**§ 15A-1420. Motion for appropriate relief; procedure.**

3 ...
4 (b1) Filing Motion With Clerk. –

5 (1) The proceeding shall be commenced by filing with the clerk of superior
6 court of the district wherein the defendant was indicted a motion, with
7 service on the district attorney in noncapital cases, and service on both the
8 district attorney and Attorney General in capital cases.

9 (2) The clerk, upon receipt of the motion, shall place the motion on the criminal
10 docket. When a motion is placed on the criminal docket, the clerk shall
11 promptly bring the motion, or a copy of the motion, to the attention of the
12 senior resident superior court judge or chief district court judge, as
13 appropriate, for assignment to the appropriate judge pursuant to
14 G.S. 15A-1413.

15 (3) The judge assigned to the motion shall conduct an initial review of the
16 motion. If the judge determines that all of the claims alleged in the motion
17 are frivolous, the judge shall deny the motion. If the motion presents
18 sufficient information to warrant a hearing or the interests of justice so
19 require, the judge shall appoint counsel for an indigent defendant who is not
20 represented by counsel. Counsel so appointed shall review the motion filed
21 by the petitioner and either adopt the motion or file an amended motion.
22 After postconviction counsel files an initial or amended motion, or a
23 determination is made that the petitioner is proceeding without counsel, the
24 judge may direct the State to file an answer. Should the State contend that as
25 a matter of law the defendant is not entitled to the relief sought, the State
26 may request leave to file a limited answer so alleging."

27 **SECTION 1.(c)** G.S. 7A-451(a) reads as rewritten:

28 "**§ 7A-451. Scope of entitlement.**

29 (a) An indigent person is entitled to services of counsel in the following actions and
30 proceedings:

31 (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00),
32 or more, is likely to be ~~adjudged;~~adjudged.

33 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the
34 General ~~Statutes;~~Statutes.

35 (3) A motion for appropriate relief under Chapter 15A of the General Statutes if
36 appointment of counsel is authorized by Chapter 15A of the General Statutes
37 and the defendant has been convicted of a felony, has been fined five
38 hundred dollars (\$500.00) or more, or has been sentenced to a term of
39 imprisonment;~~imprisonment.~~

40 (4) A hearing for revocation of ~~probation;~~probation.

41 (5) A hearing in which extradition to another state is ~~sought;~~sought.

42 (6) A proceeding for an inpatient involuntary commitment to a facility under
43 Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding
44 for commitment under Part 8 of Article 5 of Chapter 122C of the General
45 Statutes.

46 (7) In any case of execution against the person under Chapter 1, Article 28 of
47 the General Statutes, and in any civil arrest and bail proceeding under
48 Chapter 1, Article 34, of the General ~~Statutes;~~Statutes.

49 (8) In the case of a juvenile, a hearing as a result of which commitment to an
50 institution or transfer to the superior court for trial on a felony charge is
51 ~~possible;~~possible.

- 1 (9) A hearing for revocation of parole at which the right to counsel is provided
 2 in accordance with the provisions of Chapter 148, Article 4, of the General
 3 ~~Statutes; Statutes.~~
 4 (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and
 5 applicable to all petitions for sterilization pending and orders authorizing
 6 sterilization that have not been executed as of April 17, 2003.
 7 (11) A proceeding for the provision of protective services according to Chapter
 8 108A, Article 6 of the General ~~Statutes; Statutes.~~
 9 (12) In the case of a juvenile alleged to be abused, neglected, or dependent under
 10 Subchapter I of Chapter 7B of the General ~~Statutes; Statutes.~~
 11 (13) A proceeding to find a person incompetent under Subchapter I of Chapter
 12 35A, of the General ~~Statutes; Statutes.~~
 13 (14) A proceeding to terminate parental rights where a guardian ad litem is
 14 appointed pursuant to ~~G.S. 7B-1101; G.S. 7B-1101.~~
 15 (15) An action brought pursuant to Article 11 of Chapter 7B of the General
 16 Statutes to terminate an indigent person's parental rights.
 17 (16) A proceeding involving consent for an abortion on an unemancipated minor
 18 pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.
 19 G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.
 20 (17) A proceeding involving limitation on freedom of movement or access
 21 pursuant to G.S. 130A-475 or G.S. 130A-145.
 22 (18) A proceeding involving placement into satellite monitoring under Part 5 of
 23 Article 27A of Chapter 14 of the General Statutes."

24 **SECTION 1.(d)** This section becomes effective December 1, 2017, and applies to
 25 motions for appropriate relief filed on or after that date.
 26

27 PART II. HABITUAL FELONS/CLARIFY PREVIOUS CONVICTIONS

28 **SECTION 2.(a)** G.S. 14-7.1 reads as rewritten:

29 "§ 14-7.1. Persons defined as habitual felons.

30 (a) Any person who has been convicted of or pled guilty to three felony offenses in any
 31 federal court or state court in the United States or combination thereof is declared to be an
 32 habitual felon and may be charged as a status offender pursuant to this Article.

33 (b) For the purpose of this Article, a felony offense is defined ~~as an~~ to include all of the
 34 following:

- 35 (1) An offense which that is a felony under the laws of the State or other
 36 sovereign wherein a this State.
 37 (2) An offense that is a felony under the laws of another state or sovereign that
 38 is substantially similar to an offense that is a felony in North Carolina, and to
 39 which a plea of guilty was entered, or a conviction was returned regardless
 40 of the sentence actually imposed.
 41 (3) An offense that is a crime under the laws of another state or sovereign that
 42 does not classify any crimes as felonies if all of the following apply:
 43 a. The offense is substantially similar to an offense that is a felony in
 44 North Carolina.
 45 b. The offense may be punishable by imprisonment for more than a
 46 year in state prison.
 47 c. A plea of guilty was entered or a conviction was returned regardless
 48 of the sentence actually imposed.
 49 (4) An offense that is a felony under federal law. Provided, however, that
 50 federal offenses relating to the manufacture, possession, sale and kindred

1 offenses involving intoxicating liquors shall not be considered felonies for
2 the purposes of this Article.

3 (c) For the purposes of this Article, felonies committed before a person attains the age
4 of 18 years shall not constitute more than one felony. The commission of a second felony shall
5 not fall within the purview of this Article unless it is committed after the conviction of or plea
6 of guilty to the first felony. The commission of a third felony shall not fall within the purview
7 of this Article unless it is committed after the conviction of or plea of guilty to the second
8 felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be
9 felony offenses within the meaning of this Article. Any felony offense to which a pardon has
10 been extended shall not for the purpose of this Article constitute a felony. The burden of
11 proving such pardon shall rest with the defendant and the State shall not be required to disprove
12 a pardon."

13 **SECTION 2.(b)** Section 7 of S.L. 2009-369, as amended by Section 61.5 of S.L.
14 2014-115, reads as rewritten:

15 "SECTION 7. This act becomes effective December 1, 2009, and applies to applications
16 for reinstatement that occur on or after that date. ~~This act expires December 1, 2016.~~"

17 **SECTION 2.(c)** Subsection (a) of this section becomes effective December 1,
18 2017, and applies to any offense committed on or after that date and that is the principal felony
19 offense for a charge of a status offense of habitual felon. Subsection (b) of this section is
20 retroactively effective December 1, 2016. The remainder of this section is effective when it
21 becomes law. Prosecutions for offenses committed before the effective date of this section are
22 not abated or affected by this section, and the statutes that would be applicable but for this
23 section remain applicable to those prosecutions.

24 25 **PART III. INCLUDE BREAKING AND ENTERING WITH INTENT TO TERRORIZE** 26 **IN HABITUAL BREAKING AND ENTERING**

27 **SECTION 3.(a)** G.S. 14-7.25 reads as rewritten:

28 "§ 14-7.25. Definitions.

29 The following definitions apply in this Article:

- 30 (1) "Breaking and entering." – The term means any of the following felony
31 offenses:
32 a. First degree burglary (G.S. 14-51).
33 b. Second degree burglary (G.S. 14-51).
34 c. Breaking out of dwelling house burglary (G.S. 14-53).
35 d. Breaking or entering buildings generally (G.S. 14-54(a)).
36 d1. Breaking or entering with intent to terrorize or injure an occupant of
37 the building (G.S. 14-54(a1)).
38 e. Breaking or entering a building that is a place of religious worship
39 (G.S. 14-54.1).
40 f. Any repealed or superseded offense substantially equivalent to any of
41 the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
42 g. Any offense committed in another jurisdiction substantially similar to
43 any of the offenses in sub-subdivision a., b., c., d., or e. of this
44 subdivision.
45 (2) "Convicted." – The person has been adjudged guilty of or has entered a plea
46 of guilty or no contest to the offense of breaking and entering.
47 (3) "Status offender." – A person who is a habitual breaking and entering status
48 offender as described in G.S. 14-7.26."

49 **SECTION 3.(b)** This section becomes effective December 1, 2017, and applies to
50 offenses committed on or after that date.

PART IV. FINGERPRINTING UPON ARREST

SECTION 4.(a) G.S. 15A-502 is amended by adding a new subsection to read:

"§ 15A-502. Photographs and fingerprints.

...

(e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies.

(f) If a person is charged with an offense for which fingerprints are required pursuant to this section but the person is not arrested for that offense, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the Sheriff or other appropriate law enforcement agency at the earliest practical opportunity. If the person fails to appear for fingerprinting as ordered by the court, the sheriff shall so inform the court, and the court may initiate proceedings for criminal contempt against the person pursuant to G.S. 5A-15, including issue of an order for arrest pursuant to G.S. 5A-16, if necessary. The defendant shall continue to be subject to the court's order to provide fingerprints until submitted."

SECTION 4.(b) This section becomes effective December 1, 2017.

PART V. CITIZEN'S WARRANTS

SECTION 5.(a) G.S. 15A-304(b) reads as rewritten:

"(b) When Issued. – A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. ~~Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.~~

(1) Upon a finding of probable cause pursuant to subsection (d) of this section, the issuing official shall issue a criminal summons instead of a warrant, unless the official finds that the accused should be taken into custody. Circumstances to be considered in determining whether the accused should be taken into custody may include, but are not limited to, any of the following:

- a. The accused has a history of failure to appear before the court as required, or there is other evidence that the person is unlikely to appear in response to a summons for the current proceeding.
- b. There is evidence that the accused is likely to escape or otherwise flee the State in order to avoid prosecution for the offense alleged.
- c. There is evidence of imminent danger of harm to persons or property if the accused is not taken into custody.
- d. The location of the accused is not readily discoverable, such that a criminal summons would be unlikely to be served before any court date assigned at the time of issue.
- e. A relevant statute provides that arrest is mandatory for an offense charged.
- f. The seriousness of the offense. However, the fact that the offense charged is a felony shall not, by itself, constitute grounds for the issuance of a warrant.

(2) Notwithstanding subsection (d) of this section, an official shall only find probable cause based solely on information provided by a person who is not a sworn law enforcement officer if the information is provided by written affidavit. If the finding of probable cause pursuant to subsection (d) of this

1 section is based solely upon the written affidavit of a person who is not a
2 sworn law enforcement officer, the issuing official shall not issue a warrant
3 for arrest and instead shall issue a criminal summons, unless one of the
4 following circumstances exists:

5 a. There is corroborating testimony of the facts establishing probable
6 cause from a sworn law enforcement officer or at least one
7 disinterested witness.

8 b. The official finds that obtaining investigation of the alleged offense
9 by a law enforcement agency would constitute a substantial burden
10 for the complainant.

11 c. The official finds substantial evidence of one or more of the grounds
12 listed in subdivision (1) of this subsection."

13 **SECTION 5.(b)** This section becomes effective December 1, 2017, and applies to
14 warrants issued on or after that date.

15 **PART VI. SHERIFFS' SUPPLEMENTAL PENSION FUND CHANGES**

16 **SECTION 6.(a)** G.S. 143-166.82 reads as rewritten:

17 **"§ 143-166.82. Assets.**

18 (a) On and after July 1, 1985, each Clerk of Superior Court shall remit to the
19 Department of Justice the monthly receipts collected pursuant to G.S. 7A-304 (a)(3a) to be
20 deposited to the credit of the Sheriffs' Supplemental Pension Fund, hereinafter referred to as the
21 Fund, to be used in making monthly pension payments to eligible retired sheriffs under the
22 provisions of this Article and to pay the cost of administering the provisions of this Article.

23 (a1) The Department of Justice shall, at the beginning of each calendar year, calculate
24 the amount of funds, in addition to those funds from subsection (a) of this section and from
25 G.S. 143-166.83(f), needed for that year to pay the pension benefits under this Article and shall
26 bill each county for that amount on a pro rata basis based on the most recent population
27 estimates by the Office of State Budget and Management for each county. The amount so billed
28 shall be paid by each county no later than March 1st of that year to the Department of Justice
29 and shall be deposited into the Fund. For funding this contribution to the Fund, counties may
30 use the portion of the civil process service fee per G.S. 7A-311(a)(1) that is not required by
31 statute to be used to ensure the timely service of process within the county, may use other
32 funds, or both.

33 (b) The State Treasurer shall be the custodian of the Sheriffs' Supplemental Pension
34 Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and
35 G.S. 147-69.3."

36 **SECTION 6.(b)** G.S. 143-166.83 reads as rewritten:

37 **"§ 143-166.83. Disbursements.**

38 (a) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 54, effective January
39 1, 1993.

40 (b) Immediately following January 1, 1993, and the first of January of each succeeding
41 calendar year thereafter, the Department of Justice shall divide an amount equal to ninety
42 percent (90%) of the assets of the Fund at the end of the preceding calendar year and shall add
43 to that amount any assets remaining pursuant to subsection (f) of this section and the amounts
44 pursuant to G.S. 143-166.82(a1) and disburse the same as monthly payments in accordance
45 with the provisions of this Article.

46 (c) Ten percent (10%) of the Fund's assets as of January 1, 1993, and at the beginning
47 of each calendar year thereafter, may be used by the Department of Justice in administering the
48 provisions of this Article. This ten percent (10%) is to be derived from the Fund's assets prior to
49 the addition of assets remaining pursuant to subsection (f) of this section.
50

1 (d) All the Fund's disbursements shall be conducted in the same manner as
2 disbursements are conducted for other special funds of the State.

3 (e) If, for any reason, the Fund shall be insufficient to pay ~~any~~ pension benefits owed
4 under this Article or other charges, then all benefits or payments shall be reduced pro rata for as
5 long as the deficiency in amount exists. No claim shall accrue with respect to any amount by
6 which a pension payment shall have been reduced.

7 (f) Any assets remaining after reserving an amount equal to the disbursements required
8 under subsections (b) and (c) of this section shall be accrued and included in disbursements for
9 pensioners in succeeding years."

10 **SECTION 6.(c)** G.S. 143-166.85 reads as rewritten:

11 "**§ 143-166.85. Benefits.**

12 (a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit,
13 payable in equal monthly installments, equal to ~~one share for each full year of eligible service~~
14 ~~as sheriff multiplied by his total number of years of eligible service. The amount of each share~~
15 ~~shall be determined by dividing the total number of years of eligible service for all eligible~~
16 ~~retired sheriffs on December 31 of each calendar year into the amount to be disbursed as~~
17 ~~monthly pension payments in accordance with the provisions of G.S. 143-166.83(b). In no~~
18 ~~event however shall a monthly pension under this Article exceed an amount, which an amount~~
19 ~~that, when added to a retired allowance at retirement from the Local Governmental Employees'~~
20 ~~Retirement System or to the amount he would have been eligible to receive if service had not~~
21 ~~been forfeited by the withdrawal of accumulated contributions, is greater than equal to~~
22 ~~seventy-five percent (75%) of a sheriff's equivalent annual salary immediately preceding~~
23 ~~retirement computed on the latest monthly base rate, to a maximum amount that does not~~
24 ~~exceed (i) of one thousand five hundred dollars (\$1,500); (\$1,500) or (ii) the sheriff's equivalent~~
25 ~~annual salary immediately preceding retirement computed on the latest monthly base rate when~~
26 ~~the benefit described in this subsection is added to the amount of the benefit the sheriff receives~~
27 ~~under G.S. 143-166.42 and the amount of the sheriff's retired allowance at retirement from the~~
28 ~~Local Governmental Employees' Retirement System or the amount the sheriff would have been~~
29 ~~eligible to receive if service had not been forfeited by the withdrawal of accumulated~~
30 ~~contributions.~~

31 (b) All monthly pensions payable under this Article shall be paid on the last business
32 day of each month.

33 (c) At the death of the pensioner, benefits for the current calendar year will continue
34 and be paid in monthly installments to the decedent's spouse or estate, in accordance with the
35 provisions of Chapter 28A of the General Statutes. Benefits will cease upon the last payment
36 being made in December of the current year.

37 (d) Monthly pensions payable under this Article will cease upon the full-time
38 reemployment of a pensioner with an employer participating in the Local Governmental
39 Employees' Retirement System for as long as the pensioner is so reemployed.

40 (e) Repealed by Session Laws 1989, c. 792, s. 2.9.

41 (f) Nothing contained in this Article shall preclude or in any way affect the benefits that
42 a pensioner may be entitled to from any state, federal or private pension, retirement or other
43 deferred compensation plan."

44 **SECTION 6.(d)** This section becomes effective January 1, 2018.

45
46 **PART VII. EFFECTIVE DATE**

47 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
48 law.