2001

HOUSE
JUDICIARY III

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY III COMMITTEE
2001 – 2002 SESSION

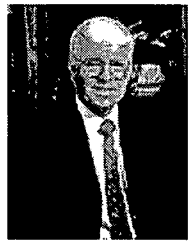
Rep. Goodwin
(Chair)

Rep. Barefoot
(Vice-Chair)

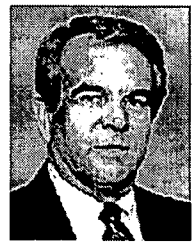
Rep. Michaux
(Vice-Chair)

Rep. Bell

Rep. Bonner



Rep. Capps



Rep. Cole

Rep. J. Crawford

Rep. M. Crawford

Rep. Daughtry

Rep. Ellis

Rep. Esposito

Rep. Fox

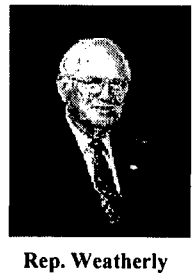
Rep. Hensley

Rep. Holmes

Rep. Jarrell

Rep. Kiser

Rep. Russell



Rep. Weatherly

HOUSE COMMITTEE ON JUDICIARY III

2001-2002 Session

MEMBER		ASSISTANT	PHONE	OFFICE
GOODWIN, Wayne	Chair	Kristen Corbett Committee Assistant	733-5849	503
BAREFOOT, Daniel	Vice-Chair	Jackie Pittman	733-5661	416B
MICHAUX, Mickey	Vice-Chair	Anita Wilder	733-5772	1325
BELL, Larry		Carolyn Edwards	733-5863	531
BONNER, Donald		Lucy Johnson	733-5803	1313
CAPPS, Russell		Nancy Fox	715-2526	1424
COLE, Nelson		Suzanne Smith	733-5779	1218
CRAWFORD, Jim		Linda Winstead	733-5824	1301
CRAWFORD, Mark		Denise Roberts	733-5605	1209
DAUGHTRY, Leo		Bernice Bullard	733-5868	510
ELLIS, Sam		Alice Falcone	733-5755	607
ESPOSITO, Theresa		Judy Lowe	715-3009	418C
FOX, Stanley		Mary Capps	733-5758	2123
HENSLEY, Bob		Margie Penven	733-5780	610
HOLMES, George		Glenda Jacobs	733-5771	2119
JARRELL, Mary		Edna Lee Collar	733-5749	2219
KISER, Joe		Marilyn Holder	733-5782	1317
RUSSELL, Carolyn		Susan Brothers	715-0873	1213
WEATHERLY, John		Nancy Garriss	733-4838	502

EX OFFICIO MEMBERS

BADDOUR, Phil	Elizabeth Kirkland	715-0850	2301
CUNNINGHAM, Pete	Valerie Rustin	733-5778	541
DEDMON, Andy	Donna Abu Harb	733-5732	2213
EARLE, Beverly	Ann Raeford	733-5747	535
HACKNEY, Joe	Emily Reynolds	733-5752	2207

Karen Cochrane-Brown, Committee Counsel
Brenda Carter, Committee Counsel
Dianna Jessup, Committee Counsel

ATTENDANCE

HOUSE COMMITTEE ON JUDICIARY III

2001-2002 SESSION

DATES	2-27-01	3-1-01	3-6-01	3-13-01	3-20-01	3-27-01	3-29-01	4-3-01	4-5-01	4-10-01	4-12-01	4-16-01	4-17-01	4-19-01 (1)
GOODWIN, Wayne CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
BAREFOOT, Daniel VICE-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
MICHAUX, Mickey VICE-CHAIR	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	
BELL, Larry (added 3-20)						✓	✓	✓	✓	✓	✓	✓	✓	✓
BONNER, Donald	✓	✓	✓	✓	✓			✓	✓	✓	✓			
CANSLER, Lanier (resigned 4-8)	✓	✓	✓	✓	✓									
CAPPS, Russell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
COLE, Nelson	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CRAWFORD, Jim			✓		✓	✓		✓		✓	✓			
CRAWFORD, Mark (added 4-11)											✓	✓	✓	✓
DAUGHTRY, Leo	✓	✓	✓	✓	✓	✓	✓	EX.	✓	✓		✓	✓	
ELLIS, Sam (added 3-15)					✓	✓	✓		✓	✓	✓	✓	✓	✓
ESPOSITO, Theresa	✓		✓	EX.	EX.	✓	✓	✓	✓	✓	✓	✓	✓	✓
FOX, Stanley		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HENSLEY, Bob	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
HOLMES, George	✓	✓		✓	✓	✓	✓		✓	✓	✓		✓	
JARRELL Mary	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
KISER, Joe			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
RUSSELL Carolyn	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
WEATHERLY, John						✓			✓	✓		✓		
Ex-Officio Members														
BADDOUR, Phil														
CUNNINGHAM, Pete			✓		✓									
DEDMON, Andy														
EARLE, Beverly														
HACKNEY, Joe														

ATTENDANCE

HOUSE COMMITTEE ON JUDICIARY III

2001-2002 SESSION

DATES	4-19-01 (2)	4-23-01	4-24-01 (1)	4-24-01 (2)	5-2-01	5-8-01	5-15-01	6-5-01	6-12-01	6-19-01	7-3-01	7-10-01	7-17-01	7-24-01
GOODWIN, Wayne CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BAREFOOT, Daniel VICE-CHAIR	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	ex.	✓
MICHAUX, Mickey VICE-CHAIR	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BELL, Larry (added 3-20)	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BONNER, Donald	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	
CANSLER, Lanier (resigned 4-8)														
CAPPS, Russell	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
COLE, Nelson	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	
CRAWFORD, Jim				✓		✓	✓	✓	✓				✓	
CRAWFORD, Mark (added 4-11)	✓	✓	✓	✓	✓	✓	ex.	✓	✓	✓	✓	✓	✓	✓
DAUGHTRY, Leo	✓	✓	✓	✓	✓	ex.	✓	ex.	✓	✓	✓	ex.	✓	✓
ELLIS, Sam (added 3-15)	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
ESPOSITO, Theresa		✓	✓	✓	✓	ex.	ex.		✓	ex.		✓	✓	
FOX, Stanley		✓	✓	✓	✓	ex.	ex.	✓	ex.	✓	✓	✓	✓	✓
HENSLEY, Bob	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HOLMES, George	✓	✓	✓	✓			✓	✓		✓				
JARRELL Mary	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
KISER, Joe	✓	✓	✓	✓	✓			✓	✓	✓	✓		✓	
RUSSELL Carolyn	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
WEATHERLY, John		✓			✓	✓	✓			✓	✓			
Ex-Officio Members														
BADDOUR, Phil														
CUNNINGHAM, Pete														
DEDMON, Andy														
EARLE, Beverly														
HACKNEY, Joe														

ATTENDANCE

HOUSE COMMITTEE ON JUDICIARY III

2001-2002 SESSION

DATES	7-26-01	7-31-01	8-7-01	8-14-01	8-16-01	8-28-01	10-9-01							
GOODWIN, Wayne CHAIR	✓	✓	✓	✓	✓	✓	✓							
BAREFOOT, Daniel VICE-CHAIR	✓	✓	✓	✓	ex.	✓	✓							
MICHAUX, Mickey VICE-CHAIR			✓	✓		✓								
BELL, Larry (added 3-20)	✓	✓	✓	ex.	✓	✓	✓							
BONNER, Donald		✓	✓	✓	✓	✓	✓							
CANSLER, Lanier (resigned 4-8)														
CAPPS, Russell	✓	✓	✓	✓		✓	✓							
COLE, Nelson	✓	✓	✓	✓		✓	✓							
CRAWFORD, Jim														
CRAWFORD, Mark (added 4-11)	✓	✓	✓	✓	✓	✓	✓							
DAUGHTRY, Leo		✓	ex. ✓	✓	ex.	✓	✓							
ELLIS, Sam (added 3-15)	✓		✓	✓	✓	✓	✓							
ESPOSITO, Theresa	✓	✓		✓	✓	✓	✓							
FOX, Stanley	✓	✓	ex.	ex.	✓	✓	✓							
HENSLEY, Bob		✓	✓	✓	✓									
HOLMES, George														
JARRELL Mary		✓	✓	✓	✓	✓								
KISER, Joe		✓	✓	✓	✓	✓	✓							
RUSSELL Carolyn	✓	✓	✓			✓								
WEATHERLY, John	✓	✓			✓									
Ex-Officio Members														
BADDOUR, Phil														
CUNNINGHAM, Pete														
DEDMON, Andy														
EARLE, Beverly														
HACKNEY, Joe														

2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0016	Smith	MOVE LEFT PASSING PULLED-OVER VEHICLE.	H	Re-ref Com On Rules, Calendar, and Operations of the House	03-28-01	04-18-01
H0028=	Daughtry	UNLAWFUL TO IMPEDE A SCHOOL BUS.	H	Re-ref Com On Judiciary III	02-20-01	
H0041	Barefoot	SECURITIES TRANSFER ON DEATH.	*H	Re-ref Com On Commerce	02-20-01	03-05-01
H0078	Tucker	GRANDPARENTS AS SUPERVISING DRIVERS.	HR	Ch. SL 2001-194	02-20-01	03-13-01
H0093	Goodwin	EXPAND CHILD ABUSE DEFINITION.	*H	Ref To Com On Judiciary II	02-20-01	03-28-01
H0107	Baker	MOTORCYCLE SAFETY ACT.	*H	Re-ref Com On Finance	02-20-01	03-08-01
H0115	Baker	PUBLIC CONFLICTS OF INTEREST.	*HR	Ch. SL 2001-409	02-15-01	03-01-01
H0115	Baker	PUBLIC CONFLICTS OF INTEREST.	*HR	Ch. SL 2001-409	08-16-01	08-28-01
H0123	Russell	STUDY ARSON.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	02-15-01	04-19-01
H0314	Preston	LOW BEAMS ONLY/ APPROACHING ONCOMING TRAFFIC.	*H	Ref To Com On Transportation	02-28-01	04-24-01
H0325	Culp	LEVEL 2 GRADUATED DRIVERS LICENSE CHANGES.	H	Ref To Com On Judiciary III	02-28-01	
H0335	Russell	SEIZED FIREARMS/ OFFICIAL LAW ENFORCEMENT USE.	*H	Re-ref Com On Judiciary II	03-01-01	04-25-01
0425=	Adams	TRAFFIC LAW ENFORCEMENT STATISTICS.	H	Re-ref Com On Judiciary III	03-12-01	
H0462	Owens	WORKERS' COMP/CERTAIN PUBLIC SCHOOL STUDENTS.	*H	Re-ref Com On Judiciary III	04-17-01	
H0493	Hensley	INCREASE PENALTY FOR INDECENT EXPOSURE.	H	Assigned To Appropriations Subcommittee on Justice and Public Safety	03-06-01	03-13-01
H0494	Hensley	INCREASE PENALTY/ CARRYING CONCEALED WEAPON.	H	Ref To Com On Judiciary II	03-06-01	04-24-01
H0548	Fitch	ABOLISH ALIEN. AFFECT./CRIM.CONV.	H	Ref To Com On Judiciary III	03-12-01	
H0564	Capps	HEADLAMPS ON WHEN MV OPERATED.	H	Ref To Com On Judiciary III	03-12-01	
H0622	Sexton	FIREARM REGULATION AMENDMENTS.	H	Ref To Com On Judiciary II	03-15-01	04-05-01
H0694=	Owens	CLARIFY MV DEALER FRANCHISE LAWS.	H	Re-ref Com On Judiciary III	03-21-01	
H0700	Barefoot	NOTARY VALIDATION.	*HR	Ch. SL 2001-154	03-20-01	04-03-01
H0774	Morris	MOTOR VEHICLE PASSING LAWS/DALTON'S LAW.	*HR	Ch. SL 2001-331	03-26-01	04-23-01

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0842	Allred	GUN SALE/CONCEALED HANDGUN PERMIT.	H	Ref To Com On Judiciary II	03-29-01	04-24-01
H0844=	Davis	DISTRICT CT. DISTRICT 11 JUDGES' RESIDENCY.	*HR	Ch. SL 2001-400	03-29-01	04-25-01
H0899	Hensley	AMEND OBSTRUCT OR DELAY PUBLIC OFFICER.	*H	Re-ref Com On Judiciary II	03-29-01	04-11-01
H0904	Goodwin	INCREASE MISDEMEANOR CHILD ABUSE PENALTY.	H	Re-ref Com On Judiciary I	03-29-01	04-19-01
H0905=	Goodwin	LARCENY/LAW ENFORCEMENT EQUIPMENT.	*HF	Failed 2nd Reading	03-29-01	04-18-01
H0946	Eddins	POSSESSION/ MANUFACTURE OF FRAUDULENT IDS.	*H	Ref To Com On Judiciary II	04-02-01	04-25-01
H0955	Arnold	NOTARY AUTHORITY MISREPRESENTATION	*HR	Ch. SL 2001-450	04-03-01	04-17-01
H0955	Arnold	NOTARY AUTHORITY MISREPRESENTATION	*HR	Ch. SL 2001-450	09-26-01	10-02-01
H0970	Capps	LITTER INFRACTION/CAR OWNER IS RESPONSIBLE.	H	Ref To Com On Judiciary III	04-04-01	
H0985	Hilton	OUT-OF-STATE HANDGUN PERMITS VALID.	*H	Re-ref Com On Judiciary III	04-05-01	04-24-01
H0985	Hilton	OUT-OF-STATE HANDGUN PERMITS VALID.	*H	Re-ref Com On Judiciary III	04-26-01	
H1020	Goodwin	FELONY/STRIKE LAW ENFORCEMENT OFFICER.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-09-01	04-24-01
H1052	Baker	LOW-SPEED VEHICLES DEFINED.	*HR	Ch. SL 2001-356	04-10-01	04-24-01
H1067=	Smith	CLARIFY AUTO REPAIR BILL OF RIGHTS.	*HR	Ch. SL 2001-298	04-10-01	04-17-01
H1134	**Davis**	**MUST REPORT THREATS OF SCHOOL VIOLENCE.**	***H**	**Re-ref Com On Rules, Calendar, and Operations of the House**	**04-23-01**	**07-19-01**
H1151	Michaux	STUDY VIOLENT HABITUAL FELON LAW.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-12-01	04-25-01
H1152	Michaux	STUDY HABITUAL FELON DEFINITION.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-12-01	04-25-01
H1196	McLawhorn	INCREASE CERTAIN SHOPLIFTING PENALTIES.	H	Ref To Com On Judiciary III	04-12-01	
H1214	Cox	SEXUAL ASSAULT.	H	Ref To Com On Judiciary III	04-12-01	
H1230	Hensley	DATE RAPE DRUGS/ ANALOGUES.	H	Ref To Com On Judiciary II	04-12-01	04-23-01
H1247	Goodwin	REPEAT CHILD MOLESTATION/ AGGRAVATING FACTOR.	H	Ref To Com On Judiciary II	04-12-01	04-19-01
H1248=	Goodwin	LOCAL REGULATION OF KEGS OF MALT BEVERAGE.	H	Ref To Com On Judiciary III	04-12-01	
H1249=	Goodwin	POSSESSING FRAUDULENT ID TO GET LIQUOR.	H	Ref To Com On Judiciary III	04-12-01	

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1278	Owens	CASINO NIGHTS FOR NONPROFITS.	H	Ref To Com On Judiciary III	04-12-01	
H1286	Goodwin	VICTIM'S INFORMATION REPOSITORY.	HR	Ch. SL 2001-302	04-12-01	04-19-01
S0030	Patrick J. Balla	OUTLAW TAKING OF SEA OATS	*HR	Ch. SL 2001-93	03-20-01	05-08-01
S0045=	Allen H. Wellons	UNLAWFUL TO IMPEDE A SCHOOL BUS.	*HR	Ch. SL 2001-26	03-01-01	04-02-01
S0137	Frank W. Ballanc	PRIVATE CORRECTIONAL OFFICERS.	*HR	Ch. SL 2001-378	03-12-01	04-12-01
S0346	Tony Rand	AMEND STALKING/ DOMESTIC VIOLENCE LAWS.	*HR	Ch. SL 2001-518	04-26-01	05-16-01
S0438	Linda Garrou	CLARIFY PUBLIC VEHICULAR AREA.	*HR	Ch. SL 2001-441	07-24-01	08-21-01
S0465	Dan Robinson	SHOOT INTO PROPERTY/ FELONY.	*H	Assigned To Appropriations Subcommittee on Justice and Public Safety	04-26-01	05-08-01
S0646	Tony Rand	HARM OR HINDER LAW OR ASSISTANCE ANIMALS.	*HR	Ch. SL 2001-411	04-30-01	08-01-01
S0646	Tony Rand	HARM OR HINDER LAW OR ASSISTANCE ANIMALS.	*HR	Ch. SL 2001-411	08-13-01	08-21-01
S0649	David W. Hoyle	MV DEALER DISCLOSURE OF CERTAIN FEES.	*HR	Ch. SL 2001-492	04-25-01	07-03-01
S0680	T. LaFontine Odo	LAWFUL FIREARM ACTIVITIES PROTECTED.	*H	Ref To Com On Judiciary II	07-11-01	08-01-01
S0833=	Tony Rand	POSSESSING FRAUDULENT ID TO GET LIQUOR.	*HR	Ch. SL 2001-461	04-26-01	05-17-01
S0833=	Tony Rand	POSSESSING FRAUDULENT ID TO GET LIQUOR.	*HR	Ch. SL 2001-461	05-29-01	10-04-01
S0866=	Brad Miller	PERSONS WITH DISABILITIES CHANGES.-AB	*H	Conf Com Appointed	06-20-01	07-26-01
S0866=	Brad Miller	PERSONS WITH DISABILITIES CHANGES.-AB	*H	Conf Com Appointed	08-08-01	08-21-01
S0990=	Tony Rand	NO DISCLOSURE OF STUDENT INFO TO 3RD PARTIES.	*HR	Ch. SL 2001-500	08-01-01	08-09-01
S1081	Oscar N. Harris	MALICIOUS CONDUCT BY PRISONER.	*HR	Ch. SL 2001-360	04-30-01	07-19-01

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'=' indicates that the original bill is identical to another bill.

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

February 22, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 115 BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS
Representative Rex Baker, Sponsor

ADJOURNMENT

Kristen Corbett (Rep. Goodwin)

From: Kristen Corbett (Rep. Goodwin)
Sent: Wednesday, February 21, 2001 2:57 PM
Subject: CANCELLATION NOTICE
Importance: High

THIS MEETING HAS BEEN CANCELED!!!!!

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2001-2002 SESSION

You are hereby notified that the Committee on **Judiciary III** will meet as follows:

DAY & DATE: **Thursday, February 22, 2001**

TIME: **12:00 Noon**

LOCATION: **421 LOB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
HB 115 **BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS**
Representative Rex Baker

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **5:00 PM** on **February 20, 2001**.

___Principal Clerk
___Reading Clerk - House Chamber

Kristen Corbett (Committee Assistant)

2/21/2001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

February 27, 2001

The House Committee on Judiciary III met on Tuesday, February 27, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bonner, Cansler, Capps, Cole, Daughtry, Esposito, Hensley, Holmes, Jarrell and Russell. Dianna Jessup, Karen Cochrane-Brown, and Brenda Carter, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

The Chair recognized Representative Baker, sponsor of the bill, to explain HB 115, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS. Representative Cansler proposes an amendment. Upon motion by Representative Cansler, the amendment was adopted. Upon motion by Representative Daughtry, the Committee voted to roll the amendment over into a Committee Substitute, give the Committee Substitute a favorable report, and give the original bill an unfavorable report.

Representative Baker, sponsor of the bill, was recognized to explain HB 107, A BILL TO BE ENTITLED AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM. Joy Barbour, Legislative Director for CBA/ABATE of NC spoke in favor of the bill. Debbie Knox, member of CBA/ABATE of NC spoke in favor of the bill. Terry Portis, Executive Director of the Brain Injury Association of NC spoke against the bill. Dennis Tedder, President of ABATE of NC spoke for the bill. There was no vote taken.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

February 27, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 115	BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS Representative Rex Baker, Sponsor
HB 107	MOTORCYCLE SAFETY ACT Representative Rex Baker, Sponsor
	Joy Barbour, CBA Terry Portis, Brain Injury Assn. Of NC

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

2-27-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	CBA/ABATE
Chales E McGhee	Ind.
DAN+ DAMICO	WINSTON-SALEM JOURNAL
JAMES ROBINSON	CBA/ABATE
DAVID McGOWAN	Greenville NC CBA
Joanne Simmons	Rockingham, NC
Ashley Smith	Little miss Richmond Co.
JIM WALLACE	GB, NC
Dwayne Abel	Kernersville, NC
LEEANNE REDWINE	BRUNSWICK CTY CBA
HOWARD COLTRANE JR	RANDOLPH CO. CBA
MARK LITTLE	RandolphCo. CBA
MIKE ALLRED	RANDOLPH CO CBA/ABATE
David Gore	Raleigh CBA
Vinny Neumann	CHATHAM CBA
Donald Key	Randolph CBA - Sand Hill Harley Owners Group
Geary Schoenberger	Randolph CBA - Camden, N.C.
DAWN ASHTON	BRUNSWICK CTY CBA
JIM EVERHART	DAVIDSON CO. CBA/ABATE
Russell Johnson JR	Davidson Co. CBA/ABATE
G.M. HERSHEY	HOG mem. SALISBURY CHAPTER
Steven D Rawis	Hog Salisbury Chapter
Martin E. Beaver	Abate/CBA State V.P
PERRI MORGAN	NFIB
Glenn E Harvey	ABATE/CBA Carteret/Craven
HENRY W. HARRISON	ABATE/CBA CARTERET/CRAVEN
Jerome Askew, Jr.	Capitalparking.com

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

2-27-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Chris Williams	SALISBURY N.C. CBA
RON DELLOR	CBA CARTERET - CRAVEN
DENNIS TEDDER	CBA/ABATE of N. C. (President)
JAN TEDDER	MONROE N.C. ABATE of N.C.
Debra Knox	Brunswick County ABATE of NC
Steve Hoffman	NCSBA
Eddie Caldwell	NC College of Emergency Physicians
Doris Weaver	NC CWA Political Council
Margaret Westbrook	KCLH
Terry Portis	Brain Injury Assoc.
Larry Harrison Jr.	Rowan C.B.A. salisbury N.C.
Rob D. Bogle	Rowan Co CBA / HOG Charlotte / HOG Salisbury
Mike Okun	NC State AFL-CIO
[signature]	UTU
[signature]	UNITED TRANSPORTATION UNION
ALLEN HUTTON	DAVIDSON CO. CBA-ABATE of NC
Deborah Allen	CBA/ABATE of NC Johnston County
Bob Murray	DAVIDSON COUNTY CBA-ABATE OF N.C.
Mikey Hindle	CHATHAM Co. CBA/ABATE of N.C.
Steve Boyles	Raleigh Chapter, CBA/ABATE of NC
JOCELYN STUMBLINGBEAR	BRUNSWICK COUNTY CHAPTER, NCCBA/ABATE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 115

Short Title:	Business Transactions Involving Public Funds.	(Public)
Sponsors:	Representative Baker.	
Referred to:	Judiciary III.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234(d1) reads as rewritten:

"(d1) The first sentence of subsection (a) shall not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public

meeting, and recorded in its minutes and the amount does not exceed ~~ten thousand dollars ($10,000)~~ twelve thousand five hundred dollars ($12,500) for medically related services and ~~fifteen thousand dollars ($15,000)~~ twenty thousand dollars ($20,000) for other goods or services within a 12-month period; and

(2) The official entering into the contract or undertaking with the unit or agency does not in his official capacity participate in any way or vote; and

(3) The total annual amount of undertakings or contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county; and

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which undertakes or contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such undertakings or contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 115
PROPOSED COMMITTEE SUBSTITUTE H115-PCS3120-SW-1

Short Title: Business Transactions Involving Public Funds. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234(d1) reads as rewritten:

"(d1) The first sentence of subsection (a) shall not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed

~~ten thousand dollars ($10,000)~~ twelve thousand five hundred dollars ($12,500) for medically related services and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) for other goods or services within a 12-month period; and

(2) The official entering into the contract or undertaking with the unit or agency does not in his official capacity participate in any way or vote; and

(3) The total annual amount of undertakings or contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county; and

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which undertakes or contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such undertakings or contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 115:
Business Transactions Involving Public Funds

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Baker
Date:	February 22, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 115 raises the population limit and contract amount used for determining which localities and contracts are exempt from the criminal self-dealing provisions in G.S.§ 14-234.

CURRENT LAW: G.S. §14-234(a) prohibits State and local officials in elected offices from becoming an undertaker in or making contracts for the officials' benefit. Violation of this statute is a Class 1 misdemeanor, punishable by up to 45 days' community punishment. Currently, State and local officials in municipalities having a population of no more than 7,500 or in counties within which there is located no municipality having a population of no more than 7,500, or members of a board of directors of a public hospital if the value of the contract does not exceed $10,000 for medically related services and $15,000 for other goods or services within a 12-month period are exempt from the prohibition.

BILL ANALYSIS: House Bill 115 raises the population limit from 7,500 to 15,000 and the contract amounts from $10,000 to $15,000 for medically-related services and from $15,000 to $20,000 for other goods and services.

The population limits are based on the recent official federal census. The official numbers from the 2000 federal census will not be available until mid-March, but based on 1990 census data, 53 counties and 447 localities meet the population requirement to be exempt from G.S. 14-234(a). If the population limit is increased to 15,000, approximately an additional 13 counties and 31 localities will become exempt.

BACKGROUND: The current population limits and dollar amounts in the exemption have not been changed since the exemption was enacted in 1979, except the dollar amount for other goods and services originally was $5,000 and was increased to the current level of $15,000 in 1987.

Erika Churchill, Staff Attorney, Research Division, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H115-AST-1 [v.2]

Date _____,2001

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Cansler

moves to amend the bill on page 2, line 4 by deleting "twenty thousand dollars ($20,000)" and substituting "twenty-five thousand dollars ($25,000)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III.**

☐ Committee Substitute for
H.B. 115 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 107

Short Title:	Motorcycle Safety Act.	(Public)
Sponsors:	Representatives Baker, Hill, Church, McComas; Arnold, Barbee, Blust, Brubaker, Buchanan, Cansler, Cox, Crawford, Culp, Daughtry, Davis, Decker, Eddins, Ellis, Fitch, Gibson, Harrington, Hilton, Hunter, Johnson, Justus, McAllister, Mitchell, Morris, Preston, Rayfield, Setzer, Sexton, Sherrill, Shubert, Smith, Walend, Walker, West, G. Wilson, Womble, and Wright.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 14, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons ~~which~~ that it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet.

b. If the operator is allowed to operate a motorcycle without a helmet, pursuant to subdivision a. of this subdivision and the

passenger is 21 years of age or older, then the passenger may ride without a helmet."

SECTION 2. G.S. 20-87(6) is repealed.

SECTION 3. G.S. 20-87 is amended by adding a new subdivision to read:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

...

(12) Private Motorcycles. – The fee on private passenger motorcycles shall be fourteen dollars ($14.00). When a motorcycle is equipped with an additional form of device designed to transport persons or property, the fee shall be twenty-one dollars ($21.00). Five dollars ($5.00) of the fees collected pursuant to this subdivision shall be used, in addition to any other funds appropriated for this purpose, to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72."

SECTION 4. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 107
PROPOSED COMMITTEE SUBSTITUTE H107-PCS3151-SW-8

Short Title: Motorcycle Safety Act. (Public)

Sponsors:

Referred to:

February 14, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons ~~which~~ that it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet.

b. If the operator is allowed to operate a motorcycle without a helmet, pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

SECTION 2. G.S. 20-87(6) is repealed.

SECTION 3. G.S. 20-87 is amended by adding a new subdivision to read:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

...

(12) Private Motorcycles. – The fee on private passenger motorcycles shall be fourteen dollars ($14.00). When a motorcycle is equipped with an additional form of device designed to transport persons or property, the fee shall be twenty-one dollars ($21.00). Five dollars ($5.00) of the fees collected pursuant to this subdivision shall be used, in addition to any other funds appropriated for this purpose, to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72."

SECTION 4. This act becomes effective October 1, 2001.

HOUSE BILL 107:
Motorcycle Safety Act

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Reps. Baker, Hill, Church, McComas
Date:	February 27, 2001		
Version:	First Edition	**Summary by:**	Dianna Jessup Committee Counsel

SUMMARY: ***House Bill 107 would permit certain operators of and passengers on motorcycles that are over age 21 to operate or ride a motorcycle without a safety helmet. The bill also changes the registration fees for motorcycles, and provides that some of the fees will be used to fund the Motorcycle Safety Instruction Program.***

CURRENT LAW: All operators and passengers of motorcycles are currently required to wear safety helmets. Payment of registration fees is required of all passenger vehicles in accordance with the classification and schedule set out in statute. The registration fee for motorcycles is currently $9.00, except if a motorcycle is equipped with an additional form of device designed to transport persons or property, the fee is $16.00. All motorcycle registration fees go to the General Fund.

BILL ANALYSIS: House Bill 107 would change current law by permitting persons that are over the age of 21 and who have had a motorcycle license or a motorcycle endorsement for more than 12 months to operate a motorcycle without a safety helmet. If the driver of the motorcycle is permitted to operate the motorcycle without a helmet, then passengers over the age of 21 may ride the motorcycle without a safety helmet.

The bill also makes changes to the registration fees for motorcycles. House Bill 107 would raise the motorcycle registration fees from $9.00 to $14.00 and from $16.00 to $21.00 for the motorcycles described above. Of the fees collected, $5.00 would be used to help fund the Motorcycle Safety Instruction Program, a motorcycle safety instruction program delivered through the Community Colleges System Office at institutions that choose to provide the program.

BACKGROUND: According to the American Automobile Association's 2000 Digest of Motor Laws, 8 states require the use of helmets only by drivers under the age of 18, and one state requires the use of a helmet only by drivers under the age of 19. Five states require the use of a helmet only for drivers and/or passengers under the age of 21. Colorado, Illinois and Iowa do not require use of helmets by anyone. Twenty-two states require that all drivers and passengers wear a helmet while operating a motorcycle.

The act becomes effective October 1, 2001.

Note: Committee Counsel advises that this bill should be referred to the Finance Committee.

The ultimate test of a nation's greatness is not the might of its army or its influence in world affairs but the degree to which it protects the basic freedoms and rights of its people. . .

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE BILL 107

Short Title:	Motorcycle Safety Act.	(Public)
Sponsors:	Representatives Baker, Hill, Church, McComas; Arnold, Barbee, Blust, Brubaker, Buchanan, Cansler, Cox, Crawford, Culp, Daughtry, Davis, Decker, Eddins, Ellis, Fitch, Gibson, Harrington, Hilton, Hunter, Johnson, Justus, McAllister, Mitchell, Morris, Preston, Rayfield, Setzer, Sexton, Sherrill, Shubert, Smith, Walend, Walker, West, G. Wilson, Womble, and Wright.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 14, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM.

The General Assembly of North Carolina enacts:

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"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

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(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet.

b. If the operator is allowed to operate a motorcycle without a helmet, pursuant to subdivision a. of this subdivision and the

passenger is 21 years of age or older, then the passenger may ride without a helmet."

SECTION 2. G.S. 20-87(6) is repealed.

SECTION 3. G.S. 20-87 is amended by adding a new subdivision to read:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

...

(12) Private Motorcycles. – The fee on private passenger motorcycles shall be fourteen dollars ($14.00). When a motorcycle is equipped with an additional form of device designed to transport persons or property, the fee shall be twenty-one dollars ($21.00). Five dollars ($5.00) of the fees collected pursuant to this subdivision shall be used, in addition to any other funds appropriated for this purpose, to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72."

SECTION 4. This act becomes effective October 1, 2001.

MOTORCYCLE SAFETY ACT

The subject of helmet use by motorcyclists evokes emotional debate among various groups. The debate is principally between the groups who claim that helmets save lives and save the public from having to pay medical costs of uninsured victims, and groups that claim that helmets cause accidents and deaths. And; mandatory helmet use is a government intrusion into the lives of a minority group of individuals, entitled to the use of America's highways, just like all other motor vehicle operators.

Much of the confusion on the efficacy of helmets stems from a lack of understanding of the real issues. Virtually all "safety" experts and medical personnel view the issue from the perspective of automobile safety, where the main thrust is **injury prevention.** In motorcycle safety, the main thrust **must** be **accident prevention,** due to the lack of protection provided by the vehicle. An experienced, educated rider is best qualified to make the necessary decisions to ensure their personal safety on roadways.

No one has ever been hurt in an accident that didn't happen.

1. **Helmets impair vision, especially peripheral vision.**
2. **Helmets interfere with the ability to see and hear what is going on around you.**
3. **Helmets provide an exaggerated perception of protection.**

In the United States, there are 29 states with a choice helmet law (generally with an age under which, helmets are mandatory) and 21 states with a mandatory helmet law. (similar to N.C.)
(Statistics show that motorcycle accident rates, per 10,000 registrations, are higher in mandatory helmet law states than in "choice" states)

Over the six year period between 1992 and 1997 mandatory helmet law states accounted for **61.3%** of registrations, **65.1%** of accidents and **63.5%** of fatalities. An analysis of the statistics shows that, in each of the six years, the mandatory helmet law states have experienced a significantly greater incidence of accidents per 10,000 registrations, as compared to the choice states.
Also; during two of the six years, statistics show that the fatality rate (per 100 accidents) of the "choice" states was actually **lower** than that, of the mandatory helmet law states.

The net result of the incidence of accidents with the fatality rate shows that, in five of the six years, the fatality rate per 10,000 registrations was **lower** in the choice states. During this time period, North Carolina had averaged 65 fatalities per year. It has been estimated that, if North Carolina could have achieved the accident/fatality rate of choice states during the six year period, we would have averaged only 34 fatalities per year or, a saving of 31 lives per year.

The other issue often raised against eligibility for voluntary helmet use is, the "public costs" associated with the treatment of injured motorcyclists. The U.N.C. Highway Safety Research Center (publication HSRC-MP70) has addressed the issue of "public" costs. Excerpts follow:

a. "Motorcyclists.....are just as likely as other road trauma patients to be insured, either commercially or privately". (abstract)

b. Mean hospital charges are less for motorcyclists as compared with other road trauma patients. (Pg. 6, Table 1)

c. "Helmet use was not found to be associated with overall injury severity ..." (Pg. 12)

d. "Based on just the evidence regarding hospital charges, discharge facility and insurance status, it would seem inappropriate to label motorcyclists "disproportionate consumers of public funds". (Pg. 15)

Additionally, data from the N.C. Trauma Registry for 13 major hospitals (including 9 trauma centers) shows that, the number of major head injuries to automobile occupants, have been over 13 times greater than those for motorcycle operators & passengers during the 1994-1996 period. (Note: these statistics do not cover all North Carolina hospitals) With the significant number of head injuries of automobile occupants, versus motorcycle operators and passengers, there has been no suggestion of making helmet use mandatory for automobile occupants.

It is clear that mandatory helmet use by motorcyclists, in view of accident and fatality statistics and findings on public and societal costs, represents an unjustified, discriminatory and deadly example of well-intended legislation.

The time has come to modify the North Carolina helmet law. Motorcycle operators and/or passengers, should be allowed the option of whether or not to utilize a helmet.

Source: American Motorcyclists Association

MOTORCYCLE HELMET DATA

Selected Statistics

	Helmet States		Choice States		National	
	Accidents	Fatalities	Accidents	Fatalities	Accidents	Fatalities
1992	215.47	2.97	190.93	2.79	206.00	2.91
1993	222.21	2.98	194.02	2.90	211.24	2.95
1994	201.19	2.93	189.78	3.28	196.93	3.06
1995	195.77	2.95	169.89	3.17	185.89	3.03
1996	187.48	2.88	149.33	3.53	172.74	3.10
1997	193.13	2.93	138.42	3.44	171.14	3.10
TOTALS	202.45	2.94	171.59	3.16	190.51	3.02

Notes: Accidents are per 10,000 Registrations
Fatalities are per 100 Accidents

Source: American Motorcyclist Association

SELECTED STATISTICS

MOTORCYCLE HELMET DATA

	Helmet States			Choice States			Total-National		
	Reg.*	Acc.	Fat.	Reg.*	Acc.	Fat.	Reg*.	Acc..	Fat.
1992	2,458	52,955	1,575	1,544	29,473	823	4,001	82,428	2,398
1993	2,352	52,270	1,557	1,498	29,062	844	3,850	81,332	2,401
1994	2,413	48,539	1,425	1,494	28,349	929	3,907	76,906	2,354
1995	2,441	47,795	1,410	1,509	25,637	812	3,950	73,432	2,221
1996	2,458	46,091	1,327	1,550	23,144	818	4,008	69,235	2,145
1997	2,417	46,675	1,369	1,594	22,060	759	4,011	68,735	2,128
6yr.av.	2,423	49,054	1,444	1,532	26,288	831	3,955	75,345	2,275
Acc./10M reg.		202.45			171.59			190.51	
Fatalities/100Acc.			2.94			3.16			3.02
%of National:		61.3			65.1			63.5	

*Registrations in Thousands

Source: American Motorcyclist Association

Table 10
Motorcycle Occupants Killed or Injured and Fatality and Injury Rates per Registered Vehicle and Vehicle Miles of Travel, 1975-1998

Year	Registered Motorcycles	Vehicle Miles Traveled (Millions)	Motorcycle Occupants Killed	Fatality Rate per 100,000 Registered Motorcycles	Fatality Rate per 100 Million VMT	Motorcycle Occupants Injured	Injury Rate per 100,000 Registered Motorcycles	Injury Rate per 100 Million VMT
1975	4,964,070	5,629	3,189	64.24	56.7	•	•	•
1976	4,933,332	6,003	3,312	67.14	55.2	•	•	•
1977	4,933,256	6,349	4,104	83.19	64.6	•	•	•
1978	4,867,855	7,158	4,577	94.02	63.9	•	•	•
1979	5,422,132	8,637	4,894	90.26	56.7	•	•	•
1980	5,693,940	10,214	5,144	90.34	50.4	•	•	•
1981	5,831,132	10,690	4,906	84.13	45.9	•	•	•
1982	5,753,858	9,910	4,453	77.39	44.9	•	•	•
1983	5,585,112	8,760	4,265	76.36	48.7	•	•	•
1984	5,479,822	8,784	4,608	84.09	52.5	•	•	•
1985	5,444,404	9,086	4,564	83.83	50.2	•	•	•
1986	5,198,993	9,397	4,566	87.82	48.6	•	•	•
1987	4,885,772	9,506	4,036	82.61	42.5	•	•	•
1988	4,584,284	10,024	3,662	79.88	36.5	105,000	2,294	1,049
1989	4,420,420	10,371	3,141	71.06	30.3	83,000	1,887	805
1990	4,259,462	9,557	3,244	76.16	33.9	84,000	1,979	882
1991	4,177,365	9,178	2,806	67.17	30.6	80,000	1,925	876
1992	4,065,118	9,557	2,395	58.92	25.1	65,000	1,601	681
1993	3,977,856	9,906	2,449	61.57	24.7	59,000	1,494	600
1994	3,756,555	10,240	2,320	61.76	22.7	57,000	1,528	561
1995	3,897,191	9,797	2,227	57.14	22.7	57,000	1,475	587
1996	3,871,599	9,920	2,161	55.82	21.8	55,000	1,428	557
1997	3,826,373	10,076	2,116	55.30	21.0	53,000	1,374	522
1998	NA	NA	2,284	–	–	49,000	–	–

• Injury data not available before 1988.
NA = not available.
Source: Registered Vehicles and Vehicle Miles Traveled—Federal Highway Administration.

Mandatory Helmet Law Report by State, 1999

State	Motorcycle Registrations	Licensed Motorcycle Operators	Rider Education Graduates	Motorcycle Accidents	Motorcycle Fatalities	Fatalities per 100 Accidents	Accidents per 10,000 Reg.
Alabama	40977	2150		846	38	4.49	206.46
California	414493	832732		5967	232	3.89	143.96
District of Colum	1387	16500		321	3	0.93	2314.35
Georgia	82248	210504		1645	44	2.67	200
Maryland	48195	186468		1070	44	4.11	222.01
Massachusetts	91872	232730		1121	32	2.85	122.02
Michigan	138243	431360		2914	77	2.64	210.79
Mississippi	19000	51267		458	18	3.93	241.05
Missouri	62701	262502		1079	29	2.69	172.09
Nebraska	19621	39832		271	7	2.58	138.12
Nevada	26808	64673		615	14	2.28	229.41
New Jersey	96000	252711		1199	36	3	124.9
New York	180880	502453		3844	112	2.91	212.52
North Carolina	88213	233112		2327	97	4.17	263.79
Oregon	62029	49072		293	17	5.8	47.24
Pennsylvania	185990	748315		2628	107	4.07	141.3
Tennessee	72567	196641		911	61	6.7	125.54
Vermont	14462	50108		87	6	6.9	60.16
Virginia	70320	223050		1320	38	2.88	187.71
Washington	96926	264450		1515	39	2.57	156.3
West Virginia	18833	76120		547	32	5.85	290.45
	1831765	4926750		30978	1083	3.71	276.67476

Source: American Motorcyclist Association

Voluntary Helmet Law Report by State, 1999

State	Motorcycle Registrations	Licensed Motorcycle Operators	Rider Education Graduates	Motorcycle Accidents	Motorcycle Fatalities	Fatalities per 100 Accidents	Accidents per 10,000 Reg.
Alaska	13695	25805		90	5	5.56	65.72
Arizona	70081	150000		2031	71	3.5	289.81
Arkansas	21151	82801		660	20	3.03	312.04
Colorado	97717	344030		1600	60	3.75	163.74
Connecticut	51000	139754		959	38	3.96	188.04
Delaware	9997	33146		205	8	3.9	205.06
Florida	218632	494160		4325	158	3.65	197.82
Hawaii	16936	30631		450	12	2.67	265.71
Idaho	34529	32604		251	12	4.78	72.69
Illinois	203935 ~~25600~~	573103		2450	104	4.24 ~~23.11~~	120.14 ~~176.78~~
Indiana	102000	220000		2064	54	2.62	202.35
Iowa	124201	216378		620	30	4.84	49.92
Kansas	42186	250000		667	16	2.4	158.11
Kentucky	35628	115605		852	27	3.17	239.14
Louisiana	61372	57176		975	30	3.08	158.87
Maine	31757	102098		459	16	3.49	144.54
Minnesota	118275	298863		1024	29	2.83	86.58
Montana	17981	70000		284	15	5.28	157.94
New Hampshire	44362	116364		708	30	4.24	159.6
New Mexico	31341	58400		748	23	3.07	238.67
North Dakota	15480	38087		112	3	2.68	72.35
Ohio	229279	594106		3298	115	3.49	143.84
Oklahoma	52971	123923		489	27	5.52	92.31
Rhode Island	20516	58111		219	5	2.28	106.75
South Carolina	45003	94888		1369	66	4.82	304.2
South Dakota	25735	49492		381	10	2.62	148.05
Texas	372229	655988		3628	152	4.19	97.47
Utah	25275	99390		589	14	2.38	233.04
Wisconsin	168113	228968		2012	65	3.23	119.68
Wyoming	14648	40064		238	10	4.2	162.48
	2137690	5393935		31757	1225	4.278	167.07666

Source: American Motorcyclist Association

Motorcycle Statistics Report by State, 1999

State	Motorcycle Registrations	Licensed Motorcycle Operators	Rider Education Graduates	Motorcycle Accidents	Motorcycle Fatalities	Fatalities per 100 Accidents	Accidents per 10,000 Reg.
[redacted]ma	40977	2150		846	38	4.49	206.46
Alaska	13695	25805		90	5	5.56	65.72
Arizona	70081	150000		2031	71	3.5	289.81
Arkansas	21151	82801		660	20	3.03	312.04
California	414493	832732		5967	232	3.89	143.96
Colorado	97717	344030		1600	60	3.75	163.74
Connecticut	51000	139754		959	38	3.96	188.04
Delaware	9997	33146		205	8	3.9	205.06
District of Colum	1387	16500		321	3	0.93	2314.35
Florida	218632	494160		4325	158	3.65	197.82
Georgia	82248	210504		1645	44	2.67	200
Hawaii	16936	30631		450	12	2.67	265.71
Idaho	34529	32604		251	12	4.78	72.69
Illinois 203935	~~25600~~	573103		2450	104	4.24 ~~23.11~~	120.14 ~~175.78~~
Indiana	102000	220000		2064	54	2.62	202.35
Iowa	124201	216378		620	30	4.84	49.92
Kansas	42186	250000		667	16	2.4	158.11
Kentucky	35628	115605		852	27	3.17	239.14
Louisiana	61372	57176		975	30	3.08	158.87
Maine	31757	102098		459	16	3.49	144.54
Maryland	48195	186468		1070	44	4.11	222.01
Massachusetts	91872	232730		1121	32	2.85	122.02
Michigan	138243	431360		2914	77	2.64	210.79
Minnesota	118275	298863		1024	29	2.83	86.58
[redacted]ssissippi	19000	51267		458	18	3.93	241.05
[redacted]ssouri	62701	262502		1079	29	2.69	172.09
Montana	17981	70000		284	15	5.28	157.94
Nebraska	19621	39832		271	7	2.58	138.12
Nevada	26808	64673		615	14	2.28	229.41
New Hampshire	44362	116364		708	30	4.24	159.6
New Jersey	96000	252711		1199	36	3	124.9
New Mexico	31341	58400		748	23	3.07	238.67
New York	180880	502453		3844	112	2.91	212.52
North Carolina	88213	233112		2327	97	4.17	263.79
North Dakota	15480	38087		112	3	2.68	72.35
Ohio	229279	594106		3298	115	3.49	143.84
Oklahoma	52971	123923		489	27	5.52	92.31
Oregon	62029	49072		293	17	5.8	47.24
Pennsylvania	185990	748315		2628	107	4.07	141.3
Rhode Island	20516	58111		219	5	2.28	106.75
South Carolina	45003	94888		1369	66	4.82	304.2
South Dakota	25735	49492		381	10	2.62	148.05
Tennessee	72567	196641		911	61	6.7	125.54
Texas	372229	655988		3628	152	4.19	97.47
Utah	25275	99390		589	14	2.38	233.04
Vermont	14462	50108		87	6	6.9	60.16
Virginia	70320	223050		1320	38	2.88	187.71
Washington	96926	264450		1515	39	2.57	156.3
West Virginia	18833	76120		547	32	5.85	290.45
Wisconsin	168113	228968		2012	65	3.23	119.68
Wyoming	14648	40064		238	10	4.2	162.48
[redacted]	3969455	10320685		62735	2308	4.0441176	212.20529

Source: American Motorcyclist Association

SUMMARY OF SITE PARTICIPATION 2000

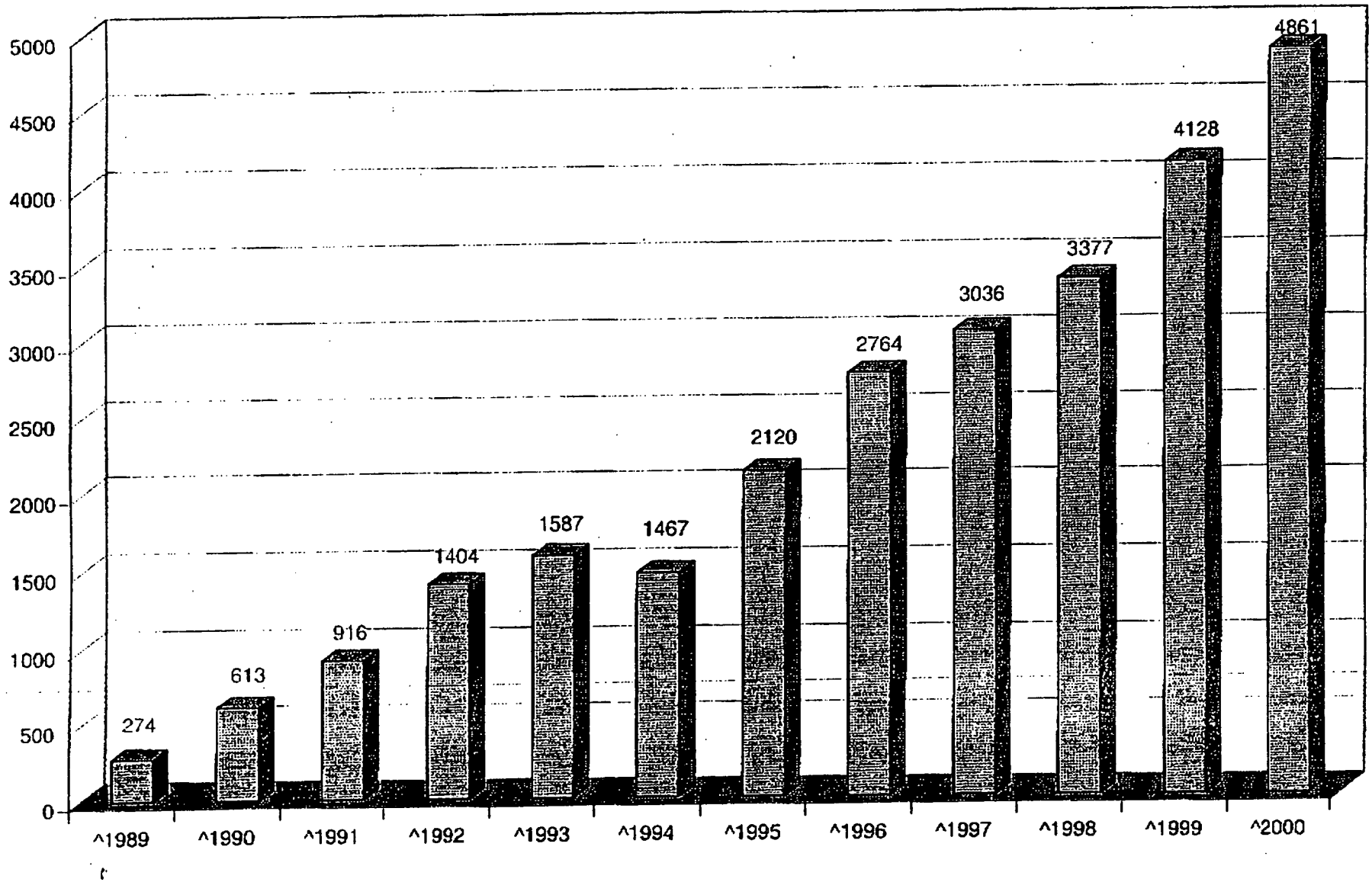
SITE	1ST QUARTER		2ND QUARTER		3RD QUARTER		4TH QUARTER		YEAR TOTAL
	RSS	ERC	RSS	ERC	RSS	ERC	RSS	ERC	
ALAMANCE	24	30	79	6	79		47		265
BLUE RIDGE	20		60	33	58	13	32		216
CALDWELL	12		57	7	118		92		286
CAPE FEAR	50		57		35	17	66		225
CENTRAL PIEDMONT	107		106		110		102		425
COASTAL CAROLINA	69	24	86	31	92	23	74		399
FAYETTEVILLE	92		104	7	100		71	9	383
FORSYTH	28	14	42	11	45		34		174
GUILFORD	79		112	14	64	22	65	5	383
JOHNSTON	48		163	41	203	23	176	5	659
LENOIR	66	11	92	13	40		60	6	288
MITCHELL	11	11	88		44	10	32		196
RANDOLPH-ASHEBORO	39	9	105		63		45	10	271
RANDOLPH-ARCHDALE	43		78		49		47		217
ROBESON	7		37		11		35	10	100
ROWAN-CABARRUS				12		15		12	39
SOUTH PIEDMONT	12		34		19		33		98
MOBILE									
VANCE-GRANVILLE	11								11
HALIFAX	12		12	8	24				56
SURRY							11		11
NASH					20		18		38
DAVIDSON			23		24		23		70
WILSON	10		11		11				32
SANDHILLS						19			19
									4861

YEAR TRAINING TOTALS FOR 2000

During 2000 the training totals were 17.75% higher than in 1999. This increase can be attributed in part to the 7 mobile unit sites and making South Piedmont a permanent site. All of the sites have had excellent participation this training season as indicated by the chart below.

SITE	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	YEAR TOTAL
ALAMANCE	54	85	79	47	265
BLUE RIDGE	20	93	71	32	216
CALDWELL	12	64	118	92	286
CAPE FEAR	50	57	52	66	225
CENTRAL PIEDMONT	107	106	110	102	425
COASTAL CAROLINA	93	117	115	74	399
FAYETTEVILLE	92	111	100	80	383
FORSYTH	42	53	45	34	174
GUILFORD	79	126	108	70	383
JOHNSTON	48	204	226	170	659
LENOIR	77	105	40	66	288
MITCHELL	22	88	54	32	196
RANDOLPH-ASHEBORO	48	105	63	55	271
RANDOLPH-ARCHDALE	43	78	49	47	217
ROBESON	7	37	11	45	100
ROWAN-CABARRUS		12	15	12	39
SOUTH PIEDMONT	12	34	19	33	98
MOBILE - VANCE-GRANVILLE	11				11
NASH			20	18	38
SURRY				11	11
HALIFAX	12	20	24		56
WILSON	10	11	11		32
DAVIDSON		23	24	23	70
SANDHILLS			19		19
TOTAL	**839**	**1529**	**1373**	**1109**	**4861**

GROWTH OF PROGRAM 1989 - 2000



Concerned Bikers Assoc./A.B.A.T.E. of North Carolina

Motorcycle Helmet Facts

*** Relative to the number of registered motorcycles, states with mandatory helmet laws had 12.5% more accidents and 2.3% more fatalities than free choice states, for the 14 year period, 1977-90.**
(Accident & Fatality Statistics, analyzed by A. R. Mackenzie, M.D.)

*** There is no discernible difference in motorcycle accident or fatality rates between states with mandatory helmet laws & those which allow for freedom of choice. In fact, states which support voluntary use, routinely achieve accident & fatality rates equal to, or better than, states with mandatory helmet laws for all riders.**
(American Motorcyclist Association, 1995)

*** Past a critical impact speed (13 MPH), which is likely to occur in real life accident situations, helmets increase the severity of neck injuries.**
(Dr. Jonathan Goldstein, Review of Helmet & Helmet Law Effectiveness Studies, 1988)

*** Helmet use is not associated with overall injury severity, discharge status or insurance status.**
(University of North Carolina Highway Safety Research Center, 1992)

*** Injured motorcycle operators admitted to trauma centers, had lower injury severity scores compared to other road trauma victims. They accrued lower hospital charges. They were less likely to rely on Medicaid & Medicare, and they had about the same level of commercial or private insurance, as other road trauma victims.**
(University of North Carolina Highway Safety Research Center, 1992)

*** The average in-patient charge for a helmeted motorcyclist receiving a brain injury was equal to that of a non-helmeted motorcyclist receiving a brain injury.**
(National Highway Traffic Safety Administration, CODES Study, 1995)

*** The average in-patient charge for a helmeted motorcyclist not receiving a brain injury, was approximately $1,000 more than that of a non-helmeted motorcyclist, not receiving a brain injury.**
(National Highway Traffic Safety Administration, CODES Study, 1995)

*** Automobile accidents account for 45.5% of all head injured patients and are responsible for 37.1% of all fatalities involving head injury.**
(The Journal of Trauma, 1989)

-OVER-

*** There are no appreciable differences found; relative to fatality rate, severity of injury, hospital stay, and discharge status between motorcycle accident victims who wore helmets and those who did not.**
(Arizona Governor's Office of Highway Safety Study, 1990)

*** Over the 6 year period 1992 through 1997, twenty-five mandatory helmet states accounted for 61.3% of registrations, 65.1% of accidents and 63.5% of fatalities. Analysis of the statistics shows that, in each of the 6 years, the mandatory helmet law states experienced a significantly greater incidence of accidents per 10,000 registrations, as compared to the choice states.**
(American Motorcyclist Association, 1997)

*** The National Highway Traffic Safety Administration has shown that tested helmets, have a failure rate of 64%.**
(National Highway Traffic Safety Administration WEB Page, Research 1999)

*** Of the top 12 states with the best motorcycle safety records (fatalities per 10,000 registrations), only one has a helmet law. On the other hand, fully half of the worst safety records are helmet law states.**
(Motorcycle Safety Foundation & Motorcycle Industry Council, data from 1986)

*** Motorcyclists are no more dependent upon public sources for medical costs, than motor vehicle operators.**
(National Highway Traffic Safety Administration, CODES Study, 1995)

*** The Department of Transportation tests helmets by a 6-foot vertical drop, impacting at 13.66 mph. Even at those low impacts, 52% of all helmets tested by the DOT have failed.**
(Department of Transportation Helmet Test Reports, 1974-1980)

*** A Kansas Health and Environment report to the National Highway Traffic Safety Administration stated, ".....we have found no evidence that the death rate for motorcycle accidents has increased in Kansas, as a result of the repeal of the helmet law. We also have found no such evidence on a national basis."**

- **As of January 15, 2001, there were 99,957 motorcycles registered in North Carolina, and 294,403 motorcycle endorsed licenses. The proposed increase in motorcycle registrations; will add an additional $199,914.00 to the fund for Rider Education Courses, totaling an annual contribution of $499,785.00.**
  (North Carolina Department of Motor Vehicles)

Economic Implications of Focused Events on Overall Tourism: A Look at Biker Events in Myrtle Beach, SC

(Study was conducted by Barr, Rauch, & Nale / Wall College of Business / Coastal Carolina University)

Over the years, a number of focused tourism-related events have evolved, each of which is intended to attract a certain segment of the population to the Grand Strand area. Two such events revolve around the attraction of motorcyclists. One occurs during early to mid-May, while the other occurs over Memorial Day weekend.

In this exploratory study, the spending patters of three tourist groups: the Harley Davidson bikers, the Memorial Day bikers, and the traditional Grand Strand tourists are examined. It is hoped that the conclusions reached in this preliminary study will be helpful to city and event planning bodies as they consider the long-term viability of these (and other) focused events.

METHODOLOGY

Data for the participants in the Harley-Davidson and Memorial Day biker events were collected on site by trained interviewers. Over 500 usable questionnaires were collected at each festival. Comparative data regarding traditional vacationers were derived via standardized questionnaires mailed each month to over 7800 visitors, with an average response rate in excess of 25%. Respondents were asked a number of questions regarding their stay, demographic information, and estimates of their overall spending in five categories: lodging, food, transportation, entertainment, and shopping.

RESULTS

In Table 1: data were tabulated regarding whether or not it was the respondent's first trip to the Grand Strand. The results would speak highly of the attractiveness of the area, due to the overwhelming percentage of respondents who had visited previously.

	HD	MD	TRAD
YES	15.1%	17.3%	20.2%
NO	84.9%	82.7%	79.8%

In Table 2: data were tabulated regarding the estimates of their overall spending in five categories: lodging, food, transportation, entertainment, and shopping.

	Per Person, Per Day Spending		Total Spent
Lodging	$39.64	Avg. Length Of Stay = 3.71 Nights	$114.19 per person, per day spending x 3.71 nights = $423.64
Food	$23.65		
Transportation	$7.61		
Entertainment	$19.02		
Shopping	$24.27		

-OVER-

In Table 3: data were tabulated regarding the estimated number of participant at the mid-May event, also known as the Myrtle Beach Spring Bike Rally

Year	Estimated Number Of Participants		Total Spending
1999	120,000	Average Length of stay = 3.71 nights, Average Spending per person = $423.64	$50,836,800
2000	180, 000		$76,255,200

2001 Committee Speech

Good afternoon Mr. Chairman, members of the committee, (& guests). I want to thank you for the opportunity to speak with you on behalf of **HB 107, M/C Safety Act.** My name is Joy Barbour & I am the State Leg. Dir. for Concerned Bikers Assoc./A.B.A.T.E. of N.C., a grass-roots, politically active organization. We have chapters from the mountains to the coast, with these groups very involved in supporting community service activities. We work hard to dispel the negative, stereotypical image of the motorcycling community. Our goals include motorcycle awareness & education, safety, & working to ensure the motorcycling public is included in the decision making process, concerning the future of transportation in this country. There are Motorcyclists' Rights Organizations-M.R.O.s &/or "A.B.A.T.E.S", (as they're known in the motorcycling community) in every state in the country.

The two most popular arguments I hear against riding without a helmet are: the chances of injury lessened, due to wearing this piece of "safety equipment" & M/Cists costing tax-payer dollars for injuries, of which "they" have no insurance coverage.
Helmets are tested by manufacturers- not the Dept. of Transportation, and they're only tested up to 13.86-87 mph. No M/Cist is going that speed except when slowing down to stop or starting-off from a stopped position. The government mandates a piece of so-called "safety equipment" that can encourage a "false sense of security" in individuals.

The University of N.C. Highway Safety Research Center proved in their 1992 study that injured motorcyclists are less likely to rely on Medicaid & Medicare and have about the same level of commercial or private insurance, as any other road trauma victim. Also, helmet use is not associated with overall injury severity, discharge status or insurance status.

Even N.H.T.S.A. (National Highway Traffic Safety Administration) found in their C.O.D.E.S. (Crash Outcome Data Evaluation) Study that motorcyclists are no more dependent on public sources for medical costs, than motor vehicle operators. By studying the information on the NHTSA WEB page, you'll find that helmet testing has a **failure rate of 64%.**

Motorcycle helmets do not prevent accidents. Traditionally, the focus of Highway Safety studies has always been **injury prevention.** Clearly, in motorcycling the focus **must** be on **accident prevention.** Awareness of one's surroundings is probably **the** most important consideration when operating a motorcycle. The ability to **see, hear, &**

concentrate on surrounding traffic, and approaching hazards from all sides, helps the rider to avoid accidents.

Motorcycle helmets **can, and do impair sight,** particularly peripheral vision & hearing. A helmet that impairs one's ability to see and hear can actually cause an accident. The temperature around a rider's head, wearing a full-faced helmet in the summer can reach up to 150 degrees. Several riders have been killed from neck injuries, when no other body trauma is found. When a rider is thrown from a motorcycle and his body hits the ground, his head is still moving forward. The G-force of the weight of the helmet is what causes the broken neck.

The Rider Street Skills & Experienced Rider Courses teach M/C operators to be aware of their surroundings. Both of these courses are taught by the N.C. M/C Safety Education Program, administered through the Community College System in our state. There's also an Instructor course taught, so riders can learn to teach others how to ride properly. The number of participants for these classes has increased steadily over the past 11 years. In some areas of the state, people have to reserve a spot in a class up to a year in advance. The interest in Wake Co. alone requires 3 new sites right now.

HB 107 seeks to do two things; allow eligibility for voluntary helmet use, by riders who are 21 yrs. of age, or older with at least one year's licensed, riding experience **&** increase M/C registrations by $2.00, with this money going for the creation of new rider training sites.

As of Jan. 15th.of this year, there were 99,927 registered motorcyclists in the state. The additional $2.00 we ask for, will generate an annual income of $199,854.00 for funding new training sites. These additional training opportunities are essential to train riders and reduce accidents.

I ask you to consider this;----No one was ever hurt in an accident that didn't happen. This bill will go a long way toward reducing accidents and will save lives in North Carolina.

Thank you again for allowing me to speak before the committee today and I ask for your favorable consideration of **HB 107-** Motorcycle Safety Act.

February 27
J3 Committee Meeting
House Bill 107—Motorcycle Safety Act

Good after noon Mr. Chairman and Honorable Committee Members

My name is Debra Knox. I am a concerned biker from Brunswick County. I am here today to ask for your support of House Bill 107....the Motorcycle Safety Act.

No one is more concerned about personal safety than the motorcycling community. I survived a motorcycle accident because I had the good fortune to be riding with an experienced and educated rider. His quick reaction to the situation saved my life. I was wearing a helmet at the time. The helmet left my head on impact. I still suffer from my injuries today. Our bike was destroyed but our lives were spared. The helmet had nothing to do with it. Experience and education averted a tragedy.

The real tragedy however is that the helmet versus non-helmet controversy blinds legislators to the fact that something must be done to make motorcycling safer. Motorcyclists are a very small portion of the transportation community yet one of the most closely scrutinized. We know and understand that with freedom to choose comes responsibility. We understand this so well that we challenge the illusion of safety created by helmets and make provisions to fund our own safety education program. No one else NEEDS to be concerned about the personal safety of the adult motorcycling community but the ones who ride.

We seek the ability to make an adult choice about our own personal safety. I challenge each and every one of you to put on a helmet for just five minutes. Imagine yourselves wearing it while driving, turn your head and try to hear or see something. If you are making a personal decision about my safety, I would prefer that you feel what I feel and know what I know.

Like most of my brothers and sisters, I have a good job, insurance for my vehicles and my health, an investment portfolio, a home and have managed to raise a happy productive family. Please don't assume you know what is best for me. For me and many motorcyclists just like me, House Bill 107 is another decision to be made for me.....by me.

Legislators have come to doubt that average Americans can exercise freedom in an intelligent way...even when their own lives depend on it. For many of us, motorcycling is our life style. Not a whim, not for recreation but because it is who we are. Americans choosing to live life as we see fit.

Ladies and Gentlemen, education is the answer for accident prevention. Training motorcyclists to ride safety and react defensively will be the key. Helmets do not ensure

the safety of motorcyclists. It is experience and education, both addressed in the Motorcycle Safety Act. I urge you to support House Bill 107. Vote for safety.

Thank you.

February 27, 2001
Terry Portis, Executive Director
Brain Injury Association of North Carolina

Statement Regarding H 107

I would like to begin by thanking Rep. Goodwin and the members of this committee for allowing me to provide a brief statement on behalf of persons with brain injury, their family members and the caring professionals who provide critical care and support.

My name is Terry Portis and I am the Executive Director of the Brain Injury Association of North Carolina. Our association has three regional family outreach centers and twenty-two local support groups across the state.

The tragic death of Dale Earnhardt in recent days has brought a lot of attention to brain injury and we have seen through the media the impact it can have on a family and beyond. This week in North Carolina, brain injury will impact the lives of seventy-five families by either killing their loved one or leaving him or her with permanent disabilities. I am here today because we already have far too many brain injuries in this state and do not want to see anyone else subjected to this trauma.

We should leave the universal helmet law as it currently exists in place for many reasons, but they all boil down to costs, both in human life and suffering and in actual public dollars. This issue is important to me because I care about the families who will be affected if this is repealed and I care about the financial burden it will add to this state.

Here are the facts that should be carefully considered: (all of these facts have been provided or reported by the National Highway Traffic Safety Administration)

1. **Helmets save lives and protect against injury.** An unhelmeted motorcyclist is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a nonfatal injury. Motorcycle helmets reduce the likelihood of a fatality by 29 percent.

2. **Injured motorcyclists without helmets cost more money to treat.** An analysis of the data by CODES (Crash Outcome Data Evaluation System) showed that without helmets, extra inpatient charges would almost double from $2,325,000 to $4,095,000. Hospital studies have found that unhelmeted motorcyclists involved in crashes are less likely to have insurance than helmeted riders in similar crashes. You can see by these numbers that is not unreasonable to assume that repealing the universal helmet law could easily cost our state $50,000,000 per year. This means that you will need to raise the motorcycle registration fee to over $500 to cover the added public expenditures.

3. **Helmet laws requiring only minors to wear helmets are extremely difficult to enforce.** In states where only minors are required to wear helmets, fewer than 40% of the fatally injured minors are wearing helmets even though the law requires them to do so.

4. **Public Support for motorcycle helmet laws is strong.** According to the National Highway Traffic Safety Administration, 82% support helmet laws, and 62 percent of people who have ridden a motorcycle in the preceding year support helmet laws.

5. **Injured Motorcyclists burden taxpayers.** In Seattle, 63 percent of trauma care for injured motorcyclists in 1985 was paid for with public funds. In a Texas study, 41 percent of injured unhelmeted motorcyclists had no insurance compared with 21% of helmeted injured motorcyclists. In Sacramento, 82 percent of orthopedic treatment costs for motorcyclists was picked up by the public funding.

6. **Motorcycle Helmets do not interfere with the vision and hearing of riders.** This is according to a study conducted by NHTSA, a summary of which is attached to this email.

7. **Education programs are not a substitute for a helmet law.** Regardless of educational programs, helmet use in states without no helmet law or with a helmet law restricted to minors is 34 to 54 percent. In states where a universal helmet law is in place, helmet usage is nearly 100%.

8. **If the Universal Helmet Law is repealed, it will cost people their lives.** The state of Louisiana repealed and then reinstated its universal helmet law. The first year after the law was reinstated there was a fatality reduction in motorcycle accidents of 30%. That represented about 40 people. It is reasonable to assume that we can expect 40 more people to die in North Carolina next year if the helmet law is repealed.

I have brought along with me copies of a summary of a research study conducted to determine if motorcycle helmets interfere with vision and hearing. I have also brought along a single copy for this committee of an impact study that was conducted in Arkansas and Texas after their universal helmet laws were repealed.

Thank you.

You may contact Terry Portis at:
Brain Injury Association of North Carolina, 202-C Boulevard St., High Point, NC 27262.
Office Phone: 336-885-3307.

TRAFFIC TECH

NHTSA Technology Transfer Series

Number 127 June 1996

DO MOTORCYCLE HELMETS INTERFERE WITH THE VISION AND HEARING OF RIDERS?

Motorcycle crash statistics show that helmets are about 29 percent effective in preventing crash fatalities. That is, on average, riders wearing a helmet have a 29 percent better chance of surviving a crash than riders without a helmet.

Opponents of mandatory state motorcycle helmet laws, however, have suggested that although effective in reducing injuries, helmets may increase a rider's risk of crashing by interfering with the ability to see and hear surrounding traffic.

The National Highway Traffic Safety Administration (NHTSA) sponsored a study to assess the effect of wearing a helmet upon the ability of motorcycle riders (1) to visually detect the presence of vehicles in adjacent lanes before changing lanes, and (2) to detect traffic sounds when operating at normal highway speeds. National Public Services Research Institute conducted the study for NHTSA.

Fifty motorcyclists of various ages and riding experience participated in the study. The riders drove their own motorcycles along a prescribed test route. The route was 5 and a half miles on a four lane divided highway. In the vision test, the riders were asked to change lanes periodically, whenever they heard a signal from a following vehicle. When they heard the signal, riders were instructed to turn their heads to check traffic in the adjacent lane, and then make the lane change in their normal manner. Each rider drove the test route three times; once each while wearing a full coverage helmet, a partial coverage helmet, and no helmet. The degree of head rotation riders made during the lane changes was measured.

To assess the effect of the different helmets upon hearing, the volume of the sound signal used to prompt the lane change was systematically varied. The minimum sound level (auditory threshold) was recorded for each rider. Half of the riders were in the vision test and half in the hearing test condition.

Vision Results

The vision test showed that most riders recover the lateral field of view that is lost by wearing a helmet by turning their heads a little farther. Before changing lanes, 19 of the 23 riders compensated for the loss by turning their heads more when they were wearing a helmet than when they were not wearing one. These riders did not require significantly more time to turn their heads to check for traffic. Only four riders did not compensate.

Helmet use did not hamper the ability of riders to see traffic or increase the time needed to visually check for nearby traffic. Overall, any negative interference of helmets on rider vision appears to be minor, especially in comparison to the protection offered by helmets should a crash occur.

Hearing Results

The hearing test showed that there were no significant differences in the riders' ability to hear the auditory signals regardless of whether they were wearing a helmet or not. There was a difference, however, in the hearing threshold between travel speeds of 30 and 50 mph. At the greater speed, all riders needed a louder auditory signal because of increased wind noise. For any given speed, helmets neither diminished nor enhanced hearing.

These results indicate that wearing helmets does not restrict the ability to hear auditory signals or the

likelihood of seeing a vehicle in an adjacent lane prior changing lanes. The information in this study will benefit motorcycle safety advocates across the nation seeking information about the impact of helmet usage on motorcyclists' vision and hearing.

HOW TO ORDER

For a copy of ***The Effects of Motorcycle Helmets on Seeing and Hearing*** (16 pages) write to the Safety Countermeasures Division, NHTSA, NTS-23, 400 Seventh Street, S.W., Washington, DC 20590, or send a fax to (202) 366-7149.

U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**
400 Seventh Street, S.W. NTS-33
Washington, DC 20590

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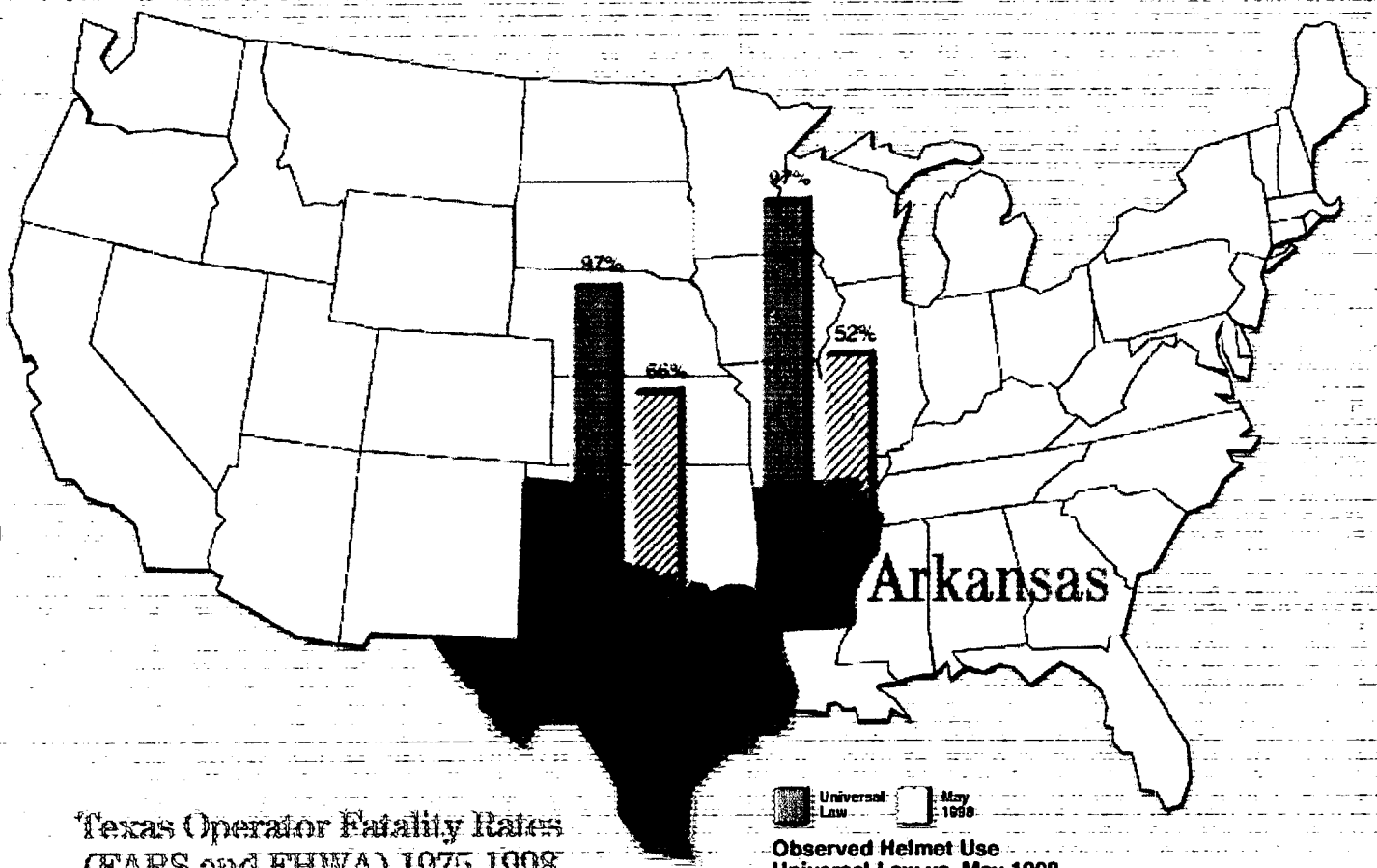
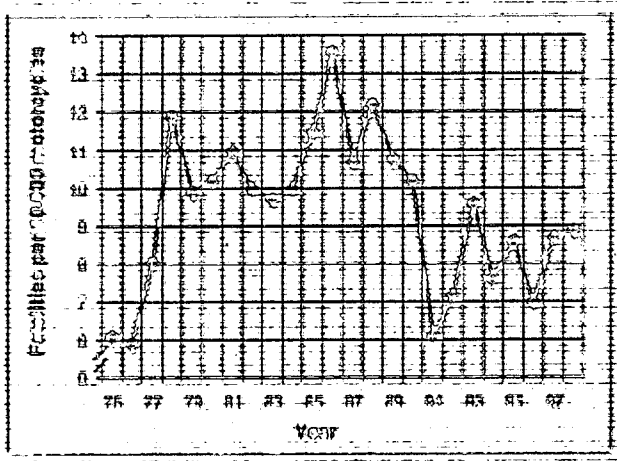
Evaluation of Motorcycle Helmet Law Repeal in Arkansas and Texas



Observed Helmet Use
Universal Law vs. May 1998
in Texas and Arkansas

Texas Operator Fatality Rates (FARS and FHWA) 1975-1998



Number (and Percentage) of Head Injuries Among Injured Motorcyclists in Arkansas

	January-July	August-December
1998	51 (10.6%)	36 (21.4%)
1997	56 (20.1%)	56 (26.8%)
1996	99 (21.6%)	66 (28.0%)

August 1, 1997, Arkansas' universal motorcycle helmet law repealed

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Dr. Linda Cosgrove served as the NHTSA Contracting Officer's Technical Representative for the study. We appreciate the guidance and support she provided. Dr. James Hedlund was an independent consultant to the project.

16. Abstract

In 1997, Arkansas and Texas became the first states since 1983 to repeal "universal" laws requiring all motorcycle riders to wear helmets. Helmet use under the universal law was 97 percent in statewide surveys (1996 in Arkansas and 1997 in Texas). By May of 1998, observed helmet use had fallen to 52 percent in Arkansas and to 66 percent in Texas. Helmet use among all reported injured motorcyclists in Texas dropped from over 90 percent before the law change in 1997 to 69 percent in the remainder of the year and to 57 percent in 1998. Helmet use of injured young riders still covered by the helmet law also declined. Helmet use among motorcyclists receiving EMS services in Arkansas dropped from about 55 percent in 1996 and in 1997 before the law change, to 33.5 percent in the remainder of 1997 and to 29 percent in 1998. Arkansas EMS data showed an increase in the number of motorcyclists with head injuries. Texas Trauma Registry data showed that the proportion of cases involving head injury increased and that the cost per case of treating head injury increased substantially after the law change. Arkansas motorcycle operator fatalities increased by 21 percent comparing 1998 with 1996. Texas motorcycle operator fatalities increased by 31 percent comparing 1998 with 1996.

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DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

TECHNICAL SUMMARY

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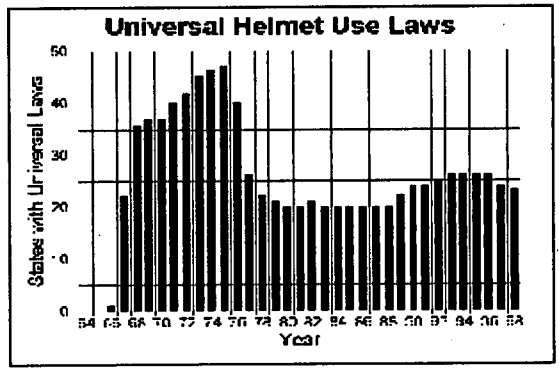
The motorcycle safety standard issued by the Secretary of Transportation in 1967 included the requirement that states adopt laws that mandate helmet use by all motorcycle riders. Twenty-two states had universal helmet use laws in effect by the end of 1967 and 14 more states added laws in 1968. By 1975, 47 states and the District of Columbia had adopted universal helmet use laws. That year, however, Congress dropped its requirement that federal-aid highway construction funds be withheld from states without universal helmet laws. By 1978, half of the states had repealed their universal helmet laws or amended them to cover only riders below a specified age. Three additional states did the same between 1979 and 1983. On the other hand, between 1982 and 1992 seven states instituted or reenacted universal helmet use laws. At the end of 1992, 25 states and the District of Columbia had universal helmet use laws in effect. Another 22 states had laws applicable only to young riders, while three states had no helmet law at all.



In 1997, Arkansas and Texas modified their mandatory helmet use laws. Effective August 1, 1997, Arkansas required helmet use only for riders under age 21, and effective September 1, 1997, Texas required helmet use only for riders under age 21 and for older riders who have not completed a rider education course or who do not have at least $10,000 medical insurance coverage.

This report examines data from Arkansas and Texas to assess the effects of their helmet law changes on helmet use, motorcyclist injuries and fatalities, and motorcyclist injury costs. The report also presents anecdotal information from several motorcyclists who crashed after the laws were changed.

(Continue on additional pages)

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HS Form 321
July 1974

Helmet Use

Helmet use decreased substantially following the Arkansas and Texas law changes as shown both in on-street observations of motorcycle riders and in reports covering motorcycle crash victims.

Observed Helmet Use

Survey date	Arkansas	Texas
Under universal helmet law	97 percent	97 percent
May 1998	52 percent	66 percent

Helmet use under the universal law, when all riders were required to wear helmets, was 97 percent in statewide surveys (1996 in Arkansas and 1997 in Texas). By May of 1998, observed helmet use had fallen to 52 percent in Arkansas and to 66 percent in Texas (observations from a special survey conducted for the study in Arkansas and from the regular statewide survey in Texas).

Helmet Use Among Injured Motorcycle Operators in Texas

Year	January-August		September-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1994	2,335	91.3	1,043	93.2
1995	2,323	91.6	991	92.2
1996	2,278	92.4	1,001	93.1
1997	2,031	90.8	1,003	69.2
1998	2,326	57.0	1,030	57.8

Helmet use among all reported injured motorcyclists in Texas dropped from over 90 percent before the law change in 1997 to 69 percent in the remainder of the year and to 57 percent during 1998.

Helmet use among motorcyclists receiving EMS services in Arkansas dropped from about 55 percent in 1996 and in 1997 before the law change, to 33.5 percent in the remainder of 1997 and below 30 percent in 1998.

Helmet Use Among Injured Motorcycle Operators in Arkansas

Year	January-July		August-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1996	276	55.8	168	57.7
1997	279	53.0	209	33.5
1998	313	29.1	238	29.8

Fatalities

Compared to the same months in 1996, motorcyclist fatalities did not change significantly in either Arkansas or Texas in the months immediately following modification of the helmet law. However, fatalities in Arkansas increased by 21 percent in the first full year following repeal (1998) compared to the last full year under the universal law (1996). In Texas, operator fatalities increased by 31 percent over these same periods.

Arkansas Motorcycle Operator Fatalities

Year	January-July	August-December
1996	8	11
1997	13	5
1998	16	7

Texas Motorcycle Operator Fatalities

Year	January-August	September-December
1996	70	31
1997	73	33
1998	86	46

Injuries

Arkansas EMS data show an increase in the number of injured motorcyclists, the number of motorcyclists with head injuries, and the proportion of all injured motorcyclists with head injuries after the law change.

Head Injuries Among Injured Motorcycle Operators in Arkansas

Year	January-July		August-December	
	Number with Head Injuries	Percent with Head Injuries	Number with Head Injuries	Percent with Head Injuries
1996	51	18.5	36	21.4
1997	56	20.1	56	26.8
1998	99	31.6	56	23.5

Texas police accident report data show that the number of injured motorcycle operators increased slightly in 1998 compared to 1994-1996. The increases occurred in fatalities and in B and C level injuries. Serious (A) injuries declined.

Costs

Texas Trauma Registry data show that the proportion of motorcyclists treated for traumatic brain injury increased and that treatment costs for traumatic brain injury cases also increased following the law change. Treatment costs for other injury cases did not change markedly.

Conclusions

In 1990, at the request of Congress, the United States General Accounting Office (GAO) reviewed and evaluated the available information on motorcycle helmets and helmet laws. GAO's 1991 report concluded that "helmet use reduces fatality rates and reduces injury severity among survivors of motorcycle accidents" and that "universal helmet laws have been very effective in increasing helmet use, virtually doubling use compared with experience without a law or with a limited law applying only to young riders. Under universal helmet laws, most states experienced 20 to 40 percent lower fatality rates than during periods without laws or under limited laws." Several studies conducted since 1991 provide more recent evidence of the same effects.

The experience to date in Arkansas and Texas is consistent with these conclusions. Arkansas and Texas data show unambiguously that helmet use dropped substantially after they repealed their universal helmet use laws. Fatalities have increased in both states. There is also good evidence that serious head injuries increased.

The evidence supports the conclusion that universal helmet laws are effective: they increase helmet use and decrease motorcyclist injuries and fatalities. They also restrict individual actions by requiring all motorcyclists to wear helmets. Accepting increased deaths and injuries, along with their attendant costs, versus restricting individual actions are at the core of the public policy debate regarding universal motorcycle helmet laws.

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I. INTRODUCTION

In 1997, Arkansas and Texas became the first states since 1983 to repeal laws requiring all motorcycle riders to wear helmets. (More precisely, each state revised its law to require helmet use only for certain motorcycle riders.) These states thus provide a recent opportunity to examine the consequences when most motorcyclists are no longer required to wear helmets.

This report examines data from Arkansas and Texas to assess the effects of their helmet law changes. The report assesses changes in helmet use, motorcyclist injuries and fatalities, and motorcyclist injury costs. The report also presents several case studies: anecdotal information from several motorcyclists who crashed after the laws were changed.

Following this introduction, the report is organized as follows:

- Chapter II, Background, describes how states have enacted, repealed, modified, re-enacted, and re-repealed motorcycle helmet laws and summarizes previous evaluations of the effects of enacting and repealing these laws.
- Chapter III, Data, describes the data that were assembled and used.
- Chapter IV, National Trends, provides national data on motorcycle registrations, travel, and casualties.
- Chapter V, Helmet Use, describes changes in motorcycle helmet use.
- Chapter VI, Fatalities and Injuries, describes changes in motorcycle rider casualties.
- Chapter VII, Injury Costs, presents the limited data on changes in the costs of treating motorcyclist injuries.
- Chapter VIII, Crash Case Studies, presents information from police reports and interviews on several Arkansas and Texas motorcycle crashes after repeal in which a motorcyclist was injured or killed.
- Chapter IX, Conclusions and Discussion, summarizes and discusses the study results.
- Chapter X, References.
- Appendix, State Helmet Law History, summarizes the history of motorcycle helmet laws in each state.

II. BACKGROUND

Motorcycle helmet use laws have been one of the most contentious measures affecting the motoring public. For more than 35 years, states have enacted, amended, repealed, and re-enacted these laws, usually amid intense public debate. Congress has passed legislation affecting state motorcycle helmet laws four times during this period.

Following four years during which no states enacted, amended, or repealed helmet use laws, Arkansas and Texas amended their helmet use laws in 1997. Prior to then, both states required all motorcycle riders to wear helmets. Effective August 1, 1997, Arkansas required helmet use only for riders under age 21, and effective September 1, 1997, Texas required helmet use only for riders under age 21 and for older riders who have not completed a rider education course or who do not have at least $10,000 medical insurance coverage. In 1998, Kentucky also repealed its universal helmet law. Effective July 15, 1998, Kentucky required helmet use only for riders under age 21, riders operating with a learner's permit or with less than one year of riding experience, and riders without health insurance. Effective in June 1999, Louisiana repealed its universal helmet law.

This study evaluates the initial effects of the law changes in Texas and Arkansas, the two states that amended their laws in 1997. To provide the appropriate context for these results, this chapter reviews the history of motorcycle helmet use laws in the United States and summarizes the effects of enacting, amending, and repealing helmet use laws.

LEGISLATIVE HISTORY

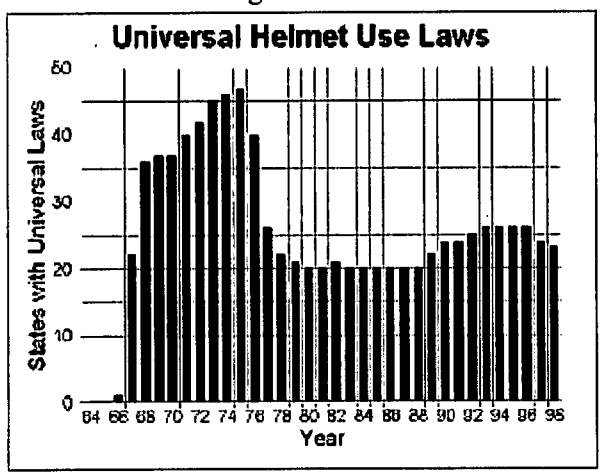
1966-1975: Most States Enact Universal Helmet Use Laws in Response to a Federal Requirement

Prior to 1966, no state had enacted a motorcycle helmet use law. The Highway Safety Act of 1966 (P.L. 89-564) changed this situation abruptly. The Act required the Secretary of Transportation to set uniform standards for state highway safety programs. One of these standards, issued in 1967, dealt with motorcycle safety. It included the requirement that states adopt universal helmet use laws -- laws that mandate helmet use by all motorcycle riders. States that failed to comply would lose a portion of their federal-aid highway construction funds.

States immediately began to enact and implement universal helmet laws. Twenty-two states had universal helmet use laws in effect by the end of 1967 and 14 more states added laws in 1968. By 1975, 47 states and the District of Columbia had adopted universal helmet use laws. The Appendix documents each state's helmet law history. Figure 1 tracks the number of states with a universal helmet law in effect at the end of each year, beginning in 1966.

From the first, helmet use laws generated controversy. The Illinois law, effective in 1967, was repealed in 1969 after being declared unconstitutional by the Illinois Supreme Court.

Figure 1



Michigan enacted a universal helmet law in 1967, repealed it in 1968, and enacted it again in 1969. Kansas enacted a universal helmet law in 1967, amended it to cover only riders under 21 in 1970, and reinstated universal coverage in 1972. Oklahoma did likewise, enacting a universal helmet law in 1967, amending it to cover only riders under 21 in 1969, and reinstating universal coverage in 1975 (finally amending it again in 1976 to cover only riders under 18).

1976-1980: Half the States Repeal or Amend their Universal Helmet Use Laws after Congress Eliminates Sanctions

In 1975, under the authority of the Highway Safety Act of 1966, the Secretary of Transportation was prepared to penalize the three states (California, Illinois, and Utah) still lacking universal helmet laws by withholding the specified portion of their federal-aid highway construction funds. This action prompted Congress to amend the Highway Safety Act. Congress eliminated the Secretary's ability to establish a motorcycle helmet law requirement or to impose penalties on states without universal motorcycle helmet laws. Freed of the Federal requirement, many states reconsidered their laws. By 1978, 25 states had repealed their universal helmet laws or amended them to cover only riders below a specified age (typically 18). Two more states did the same in 1979 and 1980, respectively, reducing the total number of states with universal helmet laws to 19 and the District of Columbia.

1981-1988: Period of Stability

In contrast to the furious pace of the preceding 15 years, the 1980s saw little legislation. In 1983, Wyoming became the twenty-eighth state to repeal its universal law and require use only by riders under 18. In 1982, Louisiana re-enacted the universal use law it had repealed in 1976.

1989-1994: Gradual Re-enactment and Congressional Encouragement

Two very disparate states -- Oregon and Texas -- re-enacted universal helmet use laws in 1989. Nebraska and Washington followed suit in 1990, as did Maryland in 1992. California, a state with more then 10 percent of the nation's registered motorcycles and one of only two states that had never had a helmet use law applicable to adults, implemented a universal law in 1992 following extensive debate and publicity. From 1992 to 1996, 25 states and the District of Columbia had universal helmet use laws in effect. Another 22 states had laws applicable only to young riders (usually those under the age of 18), while three states (Colorado, Illinois, and Iowa) had no helmet law at all.

During this time Congress once again took an interest in motorcycle helmets. In April 1990, Senators Moynihan and Chafee requested the United States General Accounting Office (GAO) to review and evaluate the available information on helmet effectiveness in preventing deaths and serious injuries, the effect of helmet laws on helmet use and motorcycle rider fatalities, and the costs to society of injuries to unhelmeted motorcyclists. GAO conducted the requested review and reported to Congress in July 1991. The report concluded that "helmet use reduces fatality rates and reduces injury severity among survivors of motorcycle accidents" and that "universal helmet laws have been very effective in increasing helmet use, virtually doubling use compared with experience without a law or with a limited law applying only to young riders. Under universal helmet laws, most states experienced 20 to 40 percent lower fatality rates than during periods without laws or under limited laws." The report recommended that "because there is convincing evidence that helmets save lives and reduce society's burden of caring for injured riders, the Congress may wish to consider encouraging states to enact and retain universal helmet laws. The Congress could return to the use of penalties [as in the 1966 Act], use incentives (e.g., making additional funds available to states that have universal laws), or use a combination of penalties and incentives" (GAO, 1991, p. 31).

With the GAO report findings as support, Congress used both *a carrot and a stick* to promote universal helmet laws as part of the Intermodal Surface Transportation Efficiency Act of 1991, commonly known as ISTEA. The *carrot* was additional federal funding for states. ISTEA provided special "incentive" grants to states with both universal motorcycle helmet laws and passenger vehicle safety belt use laws. A state qualified for a first-year grant by having these two laws in effect. In subsequent years, the state also was required to exceed minimum motorcycle helmet and safety belt use levels (helmet use of 75 percent in the second year and 85 percent in the third year). Twenty-three states and the District of Columbia received grants for one or more of the fiscal years 1992, 1993, and 1994 for which the grants were authorized.

As the *stick*, ISTEA provided that states without both a universal motorcycle helmet law and a safety belt use law by October 1, 1993, would have a portion of their fiscal year 1995 Federal-aid highway funds transferred to their highway safety programs. As most states had safety belt use laws in place, the provision's main goal was to encourage states to enact universal helmet laws.

The *carrot and stick* had little effect on state motorcycle helmet laws. Maryland has been the only state to enact a universal helmet law since 1992. At the end of fiscal year 1995, twenty-

three states had safety belt use laws but did not have universal helmet laws by October 1993 and consequently saw the specified portion of their Federal-aid highway funds transferred in that fiscal year. Three additional states had a universal helmet law but lacked a safety belt use law, and two states lacked both laws.

1995-1998: Congress Acts Again; Three States Drop Universal Helmet Laws

In November 1995, as part of the National Highway System Designation Act, Congress repealed the ISTEA transfer provision for states lacking universal helmet laws, effective with fiscal year 1996. Efforts to amend or repeal universal helmet laws grew in many states. Arkansas and Texas dropped their universal helmet laws in 1997 and Kentucky did the same in 1998. As of May 1999, 22 states had universal helmet laws in effect. Another 25 states had laws applicable only to some riders (typically riders under a specified age), while three states had no helmet law at all. Louisiana then repealed its universal law effective June 1999.

STUDIES OF HELMET USE LAW EFFECTS

The effects of state helmet law enactment and repeal have been studied in great detail. GAO's 1991 review summarizes all studies available in 1990. The GAO study and studies that have appeared since the GAO review are discussed below.

1991 GAO Review of Helmet Use Law Studies

GAO conducted a broad search for studies as of 1990 and discovered 46 that were published between 1975 and 1990, used data from the United States, and "contained original data or original analyses and met minimum criteria for methodological soundness" (GAO, 1991, p. 2).

GAO found nine studies that included data on helmet use in states with and without universal laws. These studies:

> *"reported that helmet use under universal laws ranged from 92 to 100 percent, while without a law or under a limited law [requiring only some riders to wear helmets], helmet use generally ranged from 42 to 59 percent. These data also indicated low helmet use among young riders in states with limited helmet laws"* (GAO, 1991, p. 4).

GAO found twenty studies that compared motorcycle rider fatality rates under universal helmet laws with rates during periods before enactment or after repeal of these laws.

> *"These studies consistently showed that fatality rates were lower when universal helmet laws were in effect; most rates ranged from 20 to 40 percent lower. Several of these studies compared periods before a helmet law was enacted, while it was in effect, and after it was repealed. They showed that the decreases in fatality rates when laws were*

enacted were matched by comparable increases when the laws were repealed" (GAO, 1991, p. 4)].

GAO found thirteen studies with data on some aspect of the societal costs of motorcycle accidents.

> *"These studies indicated that nonhelmeted riders were more likely to (1) need ambulance service, (2) be admitted to a hospital as an inpatient, (3) have higher hospital charges, (4) need neurosurgery and intensive care, (5) need rehabilitation, and (6) be permanently impaired and need long-term care"* (GAO, 1991, p. 4).

Studies Since 1990

Several studies have appeared since GAO's review. Some investigate the effects of recently-enacted helmet laws in California, Nebraska, Texas, and Washington. One uses new data to examine effects in several states. Others provide new data on the effectiveness of helmets in preventing injury.

California's universal helmet law became effective in January 1992. Kraus, Peek, and Williams (1995) observed helmet use at 60 locations in seven California counties, twice before and four times after California's law became effective. They concluded that helmet use increased from about 50 percent in 1991 to more than 99 percent in 1992.

Kraus et al. (1994) compared California's motorcycle crash experience in 1991, before the law, with 1992, after the universal law. Motorcycle fatalities statewide decreased 37 percent, from 523 in 1991 to 327 in 1992. The fatality rate per registered motorcycle decreased 26 percent.

Kraus and Peek (1995) studied injured motorcyclists treated at 18 hospitals in 10 California counties between January 1, 1991 and December 31, 1993 (2037 patients in 1991, before the law, and 2753 in 1992 and 1993, after the law). Helmet use among these injured motorcyclists rose from 30 percent in 1991 to 86 percent in 1992 and 88 percent in 1993. Both the severity and number of head injuries per rider decreased after the law.

Nebraska's universal helmet law became effective in January 1989; a previous universal law had been declared unconstitutional by the Nebraska Supreme Court and was repealed in 1977. Mulleman, Mlinek, and Collicott (1991) observed a 26 percent reduction in crashes per registered motorcycle in the following year, compared to the five previous years and to five adjoining states without universal helmet laws. They also studied all motorcyclists with reported crash injuries in two urban counties during 1988 and 1989 (421 in 1998 and 250 in 1989). They found that the universal law produced sharp declines in the numbers and rates of injuries, hospital transports, hospital admissions, severe injuries to the head, and deaths.

Texas enacted a universal helmet use law in 1968, repealed it in 1977 and required helmet use only for riders under 18, and re-enacted a universal helmet law in 1989. Lund, Williams, and

Womack (1991) present data showing that helmet use increased from less than 50 percent just before the 1989 universal law to 90 percent immediately after the law became effective and to 95 percent two months later.

Mounce et al. (1992) found an 11 percent reduction in serious injury crashes per registered motorcycle after the law, using police-reported data. Hospital data from the first nine months after the law showed that motorcyclists injured after the law suffered less serious injuries and were less likely to have head or face injuries than motorcyclists injured before the law. Fleming and Becker (1992) found a 13 percent reduction in fatalities and in severe injuries in the first 12 months after the universal law was reinstated, after using time series methods to control for long-term declines in motorcycle fatalities. They found a 57 percent decrease in head-related fatalities and a 55 percent reduction in severe head-related injuries among hospital-admitted motorcyclists.

Washington's universal helmet law became effective in June 1990. Mock et al. (1995) analyzed 992 motorcycle crash victims admitted to the Seattle region's only level 1 trauma center from 1986 through 1993. They found that severe head injuries decreased from 20 percent of all admitted patients before the law to 9 percent after the law. Mortality among admitted patients decreased following the law.

Multi-state. As part of the 1991 ISTEA legislation, Congress required NHTSA to study the effects of safety belt and motorcycle helmet use in crashes. NHTSA conducted the analysis using its Crash Outcome Data Evaluation System (CODES) data system, in which seven states linked data from their police crash reports, emergency medical services, hospital emergency departments, hospital discharge files, claims and other sources. NHTSA's 1996 Report to Congress found that "motorcycle helmet effectiveness ranged from 9 percent in preventing any kind of injury to 35 percent in preventing a fatality." "The average inpatient charge for motorcycle crash victims receiving inpatient care was $14,377 for those who used helmets, and $15,578 for those who did not" (NHTSA, 1996).

Additional analyses of the CODES data showed that helmet use for motorcycle riders involved in crashes ranged from 80 to 98 percent in three CODES states with universal helmet laws and from 30 to 49 percent in three CODES states without universal laws. Helmets were found to be 36 percent effective in preventing death and 65 percent effective in preventing brain injuries in a crash (NHTSA, 1998a).

Sosin, Sacks, and Wilson (1990) used National Center for Health Statistics Multiple Cause of Death data to study motorcycle fatalities from 1979 through 1986. They found that 53 percent of the 28,749 motorcycle fatalities were associated with head injuries. Rates per population for motorcycle fatalities associated with head injury (adjusted by age, sex, and race) were almost twice as high in states without universal helmet laws as in states with universal helmet laws. Fatalities per registered motorcycle also were greater in states without universal helmet laws. In the two states that dropped universal coverage during the study period, motorcyclist fatalities per population rose substantially: by 184 percent in South Carolina and by 73 percent in Wyoming.

In Louisiana, the one state that introduced a universal law, the population based motorcyclist fatality rate fell 44 percent.

Helmet effects. Kelley et al. (1991) studied 398 motorcycle crash victims in eight Illinois medical centers from April through October 1988. Illinois had no helmet law at that time. They concluded that unhelmeted patients had higher overall injuries (measured by the Injury Severity Score) and more frequent head and neck injuries than helmeted motorcyclists.

Kraus et al. (1995) studied 174 fatally injured and 379 nonfatally injured crash-involved motorcyclists in Los Angeles County, California, in 1988-1989, before California's universal helmet law. They concluded that "those not using helmets where helmet use is voluntary are a higher risk population than helmet users. They are more likely to be involved in crashes but, because they are unhelmeted, less likely to be protected against serious head injury."

Rowland et al. (1996) studied 86 fatally injured and 386 hospitalized motorcyclists in the state of Washington in 1989 (when Washington's helmet law covered only riders under age 18). They concluded that "motorcycle helmet use is strongly and independently associated with reduced likelihood and severity of head injury, reduced overall injury severity, and reduced probability of motorcycle-related hospitalization and death attributable to head injury."

Sakar, Peek, and Kraus (1995) studied 173 fatally injured motorcyclists in Los Angeles County, California between July 1, 1988, and October 31, 1989. They concluded that head and cervical spine injuries were more frequent in unhelmeted than in helmeted fatally injured motorcyclists.

Summary

The studies since the GAO report confirm GAO's conclusions with more recent data. All studies concluded that universal motorcycle helmet laws raise helmet use to 90 percent or higher from pre-law levels of 50 percent or lower. Universal laws reduce motorcycle fatalities, fatality rates, and severe head injuries. The studies also confirm that helmets reduce the probability of injury, of head injury, and of fatality for crash-involved motorcyclists.

III. DATA

Data for the study were obtained from the following sources. The data are discussed in more detail in the chapters where they are used.

Motorcyclist fatalities, 1975-1998, from NHTSA's FARS

Motorcycle registrations, 1975-1998, from FHWA

Motorcycle miles of travel, 1975-1998, from FHWA

Arkansas motorcycle crashes, 1996-1998, from the Arkansas EMS Pre-Hospital Care data file (statewide excluding Little Rock)

Arkansas Hospital Discharge Data, 1996-1997, from the Arkansas Department of Health, who also matched EMS and Hospital Discharge records

Arkansas helmet use observations: statewide observations in 1996 from the Arkansas occupant protection survey; observations made in selected counties in November 1997 and May 1998 for this project

Texas motorcycle crashes, 1994-1998, from the Texas Department of Public Safety (DPS)

Texas Trauma Registry data, 1996-1997, from the Texas Department of Health, which also matched motorcycle crash data from the Texas DPS with Trauma Registry cases

Texas helmet use observations: statewide observations in 1997 and 1998 from the Texas Transportation Institute's occupant protection survey; observations made in selected cities in November 1997 for this study

Oklahoma motorcycle crashes, 1996-1997, from the Oklahoma EMS Pre-Hospital Care data file.

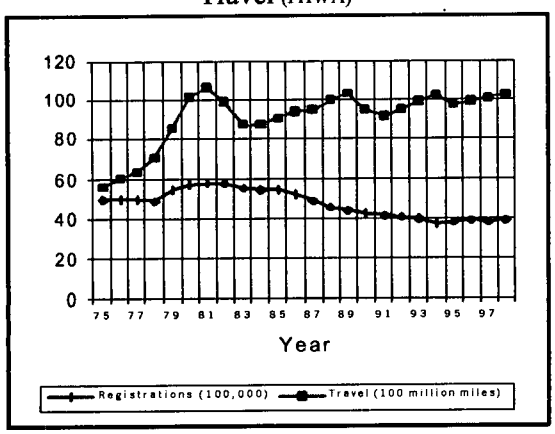
IV. NATIONAL TRENDS

Motorcycle registration, travel, and casualty trends in the United States differ considerably from passenger vehicle trends. This chapter examines these trends briefly to provide context for the Arkansas and Texas experience.

REGISTRATIONS AND TRAVEL

Table 1 shows the number of registered motorcycles reported for the United States (as well as Arkansas and Texas) for the years 1975 through 1998 and the estimated national annual miles of travel for motorcycles. Figure 2 shows the national trend data graphically.

Figure 2. US Motorcycle Registrations and Travel (FHWA)



Motorcycle registrations peaked in 1981 at 5.8 million then declined gradually but steadily until about 1994. Registrations in more recent years have been relatively steady. The 1998 motorcycle registration level of approximately 3.9 million is 33 percent below the 1981 peak. Motorcycle travel, on the other hand, has fluctuated between about 9 and 10 billion miles annually since reaching that level in 1981. This means that the average annual miles driven per registered motorcycle have increased from 1,134 in 1975 to 1,833 in 1981 and to 2,645 in 1998. The smaller number of registered motorcycles and the larger annual mileage per motorcycle suggests that the typical motorcyclist in 1998 rides more miles and may be a more experienced motorcycle operator than the typical motorcyclist 20 years ago.

Motorcycle registrations in Texas peaked in 1981, at the same time as registrations nationally, and then declined substantially. Texas registrations in 1998 were 56 percent below the 1981 peak. Registrations in Arkansas were somewhat more variable but also have declined substantially since 1980. Registrations in 1998 were 38 percent below the 1980 level. Figures 3 and 4 illustrate Arkansas and Texas motorcycle registration trends. Accurate motorcycle travel data by state are not available.

FATALITIES AND INJURIES

Table 2 gives the number of motorcycle operators killed in the United States each year from 1975 to 1998, the proportion that were helmeted, and the fatality rates per 10,000 registered motorcycles and per mile traveled. Figures 5 and 6 display the information graphically.

Table 1. Motorcycle Registrations and Travel, 1975-1998

Year	Registrations - US	Registrations - Arkansas	Registrations - Texas	Travel - US (million miles)
1975	4,964,070	36,954	273,863	5,629
1976	4,933,332	33,096	270,089	6,003
1977	4,933,256	31,351	285,735	6,349
1978	4,867,855	31,399	218,966	7,158
1979	5,422,132	33,462	291,510	8,637
1980	5,693,940	34,153	316,318	10,214
1981	5,831,132	30,432	338,141	10,690
1982	5,753,858	25,976	337,756	9,910
1983	5,585,112	23,804	326,293	8,760
1984	5,479,822	28,161	312,393	8,784
1985	5,444,404	28,886	281,027	9,086
1986	5,198,993	24,114	252,382	9,397
1987	4,885,772	20,077	229,704	9,506
1988	4,584,284	16,608	211,668	10,024
1989	4,420,420	15,142	191,520	10,371
1990	4,259,462	14,556	174,334	9,557
1991	4,177,365	14,000	185,167	9,178
1992	4,065,118	13,906	164,147	9,557
1993	3,977,856	13,809	143,772	9,906
1994	3,756,555	14,374	146,948	10,240
1995	3,767,029	17,217	130,117	9,797
1996	3,871,599	16,490	148,815	9,920
1997	3,826,373	14,331	133,423	10,076
1998	3,879,450	21,070	149,175	10,260

Source: FHWA

Table 2. United States Motorcycle Operator Fatalities and Fatality Rates, 1975-1998

Year	Operator Fatalities	Percent Helmeted	Fatalities per 10,000 Motorcycles	Fatalities per 10M VMT
1975	2,727	63.5	5.49	4.84
1976	2,825	59.7	5.73	4.71
1977	3,488	59.9	7.07	5.49
1978	3,847	50.3	7.90	5.37
1979	4,067	46.5	7.50	4.71
1980	4,309	43.8	7.57	4.22
1981	4,152	44.7	7.12	3.88
1982	3,726	46.8	6.48	3.76
1983	3,594	44.3	6.43	4.10
1984	3,902	45.4	7.12	4.44
1985	3,898	43.9	7.16	4.29
1986	3,790	45.9	7.29	4.03
1987	3,411	43.1	6.98	3.59
1988	3,140	43.1	6.85	3.13
1989	2,687	43.9	6.08	2.59
1990	2,791	47.5	6.55	2.92
1991	2,405	47.3	5.76	2.62
1992	2,079	58.8	5.11	2.18
1993	2,110	59.1	5.30	2.13
1994	1,970	56.5	5.24	1.92
1995	1,914	58.8	4.91	1.95
1996	1,853	58.6	4.79	1.87
1997	1,845	59.3	4.82	1.83
1998	1,981	56.1	5.11	1.93

Source: FARS; operators of mopeds, off-road motorcycles, motor scooters, etc., are excluded

Figure 3. Arkansas Motorcycle Registrations (FHWA)

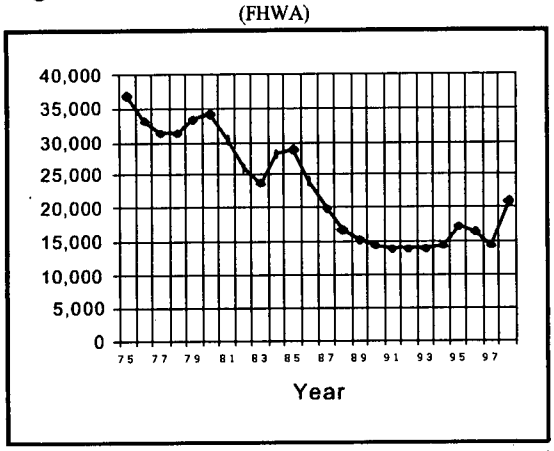


Figure 4. Texas Motorcycle Registrations (FHWA)

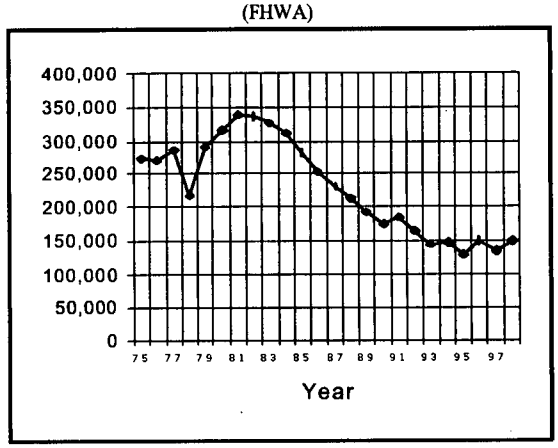


Table 2 and Figure 5 show that motorcycle operator fatalities peaked in 1980, at about the same time that motorcycle registrations were highest, and also have declined gradually but steadily since then. Table 2 and Figure 6 show that fatality rates also peaked at the same time (1977 for fatalities per mile and 1978 for fatalities per registered motorcycle) and also declined subsequently. Measured in either way, motorcycling has become safer in the last two decades.

Figure 5. Motorcycle Operator Fatalities (FARS)

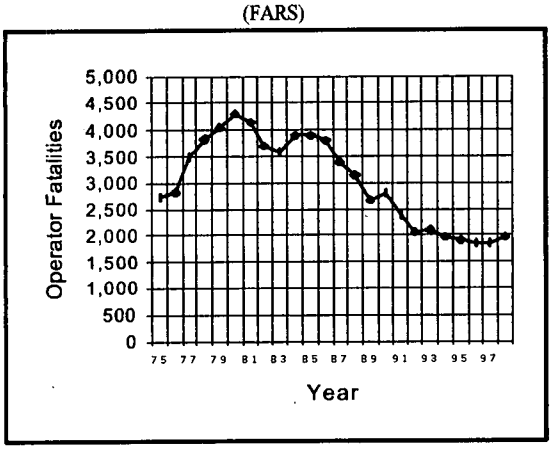
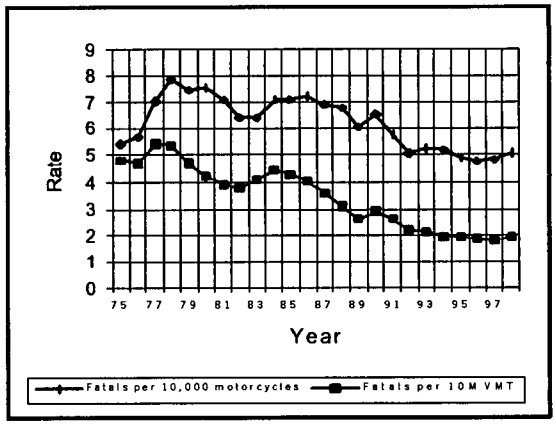


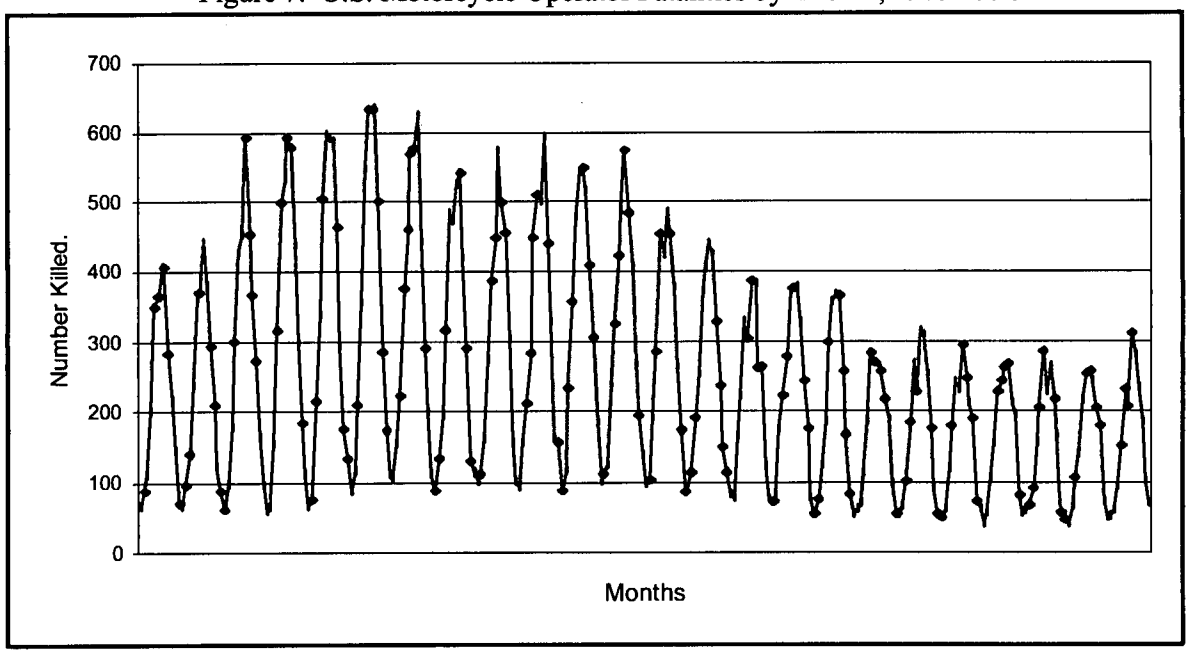
Figure 6. Motorcycle Operator Fatality Rates (FARS)



Since 1988, NHTSA's General Estimates System has used information from police crash reports to estimate the number of motorcyclists with any police-reported injury. The estimated number of injured motorcycle riders annually has decreased by almost 50 percent during this time, from 105,000 in 1988 to 49,000 in 1998 (NHTSA, 1999). Since these estimates are based on a relatively small sample of motorcycle crashes, the actual number of injuries may differ from the estimates by as much as 20 percent (see NHTSA, 1999, p. 192). Nevertheless, they provide additional evidence that motorcycling has become safer since 1988.

Motorcycle travel is far more common in warm weather than in cold. Figure 7 illustrates this by showing the number of motorcycle operators killed in the U.S. each month from 1975 through 1998. As expected, many more fatalities occurred during the warmer months when ridership is greater. The peaks in the figure generally are in the month of July while the valleys are in December or January. Helmet use also changes with the season, with higher use generally found during the winter than the summer months.

Figure 7. U.S. Motorcycle Operator Fatalities by Month, 1975-1998



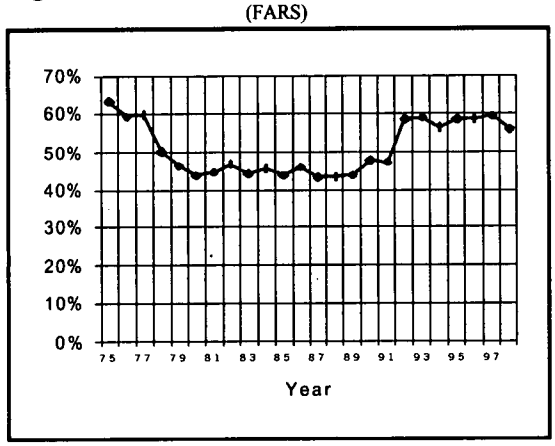
HELMET USE

The percentage of fatally injured operators who were helmeted began to decline in 1978, reached a low in 1987-1988, and has been climbing since. Figure 8 shows the trend graphically. The substantial increase in 1992 may be influenced by California, where the universal helmet law became effective on January 1, 1992.

Observed helmet use by fatally injured motorcycle operators will be lower than helmet use observed for all motorcycle operators on the road for two reasons. First, helmeted operators in a severe crash are less likely to die than unhelmeted operators. Second, some studies have found that operators who do not wear helmets are more likely to be involved in crashes (see Kraus et al. 1995). While the second effect cannot be estimated, the first can. The following example illustrates the effect.

Assume that helmets are 29 percent effective in preventing fatal injuries to motorcycle operators in severe crashes, as estimated by NHTSA (Wilson, 1989). Assume also that 50 percent of operators wear helmets and that an equal number of helmeted and unhelmeted operators suffer a severe crash. Of each 1,000 operators involved in a severe crash, the 500 unhelmeted operators will all die, but 29 percent, or 145, of the 500 helmeted operators will survive. The fatalities will then consist of 500 unhelmeted and 355 helmeted victims. Helmet use among the fatalities will be 355/855, which is 42 percent, less than the 50 percent use rate for operators on the road.

Figure 8. U.S. Operator Fatality Helmet Use
(FARS)



V. HELMET USE

Helmet use decreases following the Arkansas and Texas law changes were apparent both in on-street observations of motorcycle riders and in reports covering motorcycle crash victims.

OBSERVED HELMET USE

Arkansas

Motorcycle helmet use in Arkansas was observed in the summer of 1996 as part of a statewide occupant protection survey. Helmet use was recorded for 30 minutes each at 288 sites randomly selected throughout the state; 177 motorcyclists were observed (Peters, 1996). Helmet use was recorded in November 1997 and May 1998 for this evaluation, using counties and sites from the Peters survey that typically produced the most motorcyclists and that were generally geographically representative of the state. Observations were made in five counties using six or seven locations in each county. Only 11 motorcyclists were observed in the November survey while 122 were observed at the same sites in May 1998.

Helmet use in the 1996 statewide survey was 97 percent. By November 1997, two months after the law change, 82 percent of the 11 observed cyclists were helmeted. In May 1998, helmet use had dropped to 52 percent with an additional 2 percent wearing a fake helmet (i.e., headgear that simulates the appearance of a helmet but without substantial protective value).

Table 3. Observed Helmet Use in Arkansas

Time	Observations	Observed Helmet Use
Summer 1996 (pre-law); Peters; statewide	177	97 percent
November 1997 (post-law); selected counties	11	82 percent
May 1998 (post-law); selected counties	122	52 percent

Texas

Motorcycle helmet use was observed in May of 1997 and 1998 by the Texas Transportation Institute (TTI) as part of the annual Texas occupant protection survey. Helmet use was recorded in November 1997 for this evaluation. As in Arkansas, the November observations were conducted at cities and sites used in the TTI survey that typically produced the

most motorcyclists and were broadly representative of Texas. The May surveys recorded helmet use for 1 hour each at 277 sites randomly selected throughout the state. The November observations were made in seven cities using four or five locations in each city. A total of 112 motorcyclists were observed.

Helmet use dropped from 97 percent in May 1997, three months before the law change, to 77 percent three months after the universal helmet law was dropped with an additional 3 percent wearing a fake helmet. By May 1998, helmet use decreased further to 66 percent.

Table 4. Observed Helmet Use in Texas

Time	Observations	Observed Helmet Use
May 1997 (pre-law); TTI; statewide	393	97 percent
November 1997 (post-law); selected cities	112	77 percent
May 1998 (post-law); TTI; statewide	483	66 percent

In both states, the surveys conducted for this study used fewer sites than the statewide surveys. Consequently, the results are not directly comparable and the use rates observed may differ from statewide use rates. The surveys do show clearly that motorcycle helmet use among riders on the road decreased substantially in both Arkansas and Texas shortly after the law changes became effective.

HELMET USE AMONG INJURED CYCLISTS

Helmet use among injured motorcyclists may be lower than helmet use observed on the road for the same two reasons noted in Chapter IV. Helmets prevent many head and face injuries in a crash. However, a helmeted motorcyclist in a crash may receive other injuries, so still may be recorded as injured. And there is some evidence that unhelmeted motorcyclists may be involved in crashes more frequently than helmeted motorcyclists.

Arkansas

Table 5 shows that helmet use among motorcyclists receiving EMS services was about 55 percent in 1996 and in 1997 through July. In August through December 1997, the five months following the law change, helmet use dropped to 33.5 percent. In 1998, the first full year without a universal helmet law, helmet use was 29.0 percent during the months of January-July and 29.8 percent in August -December.

Table 5. Helmet Use Among Motorcyclists Treated by EMS in Arkansas

Year	January-July		August-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1996	276	55.8	168	57.7
1997	279	53.0	209	33.5
1998	313	29.1	238	29.8

Texas

Table 6 shows similar results for injured motorcyclists in Texas, as reported by the Texas Department of Public Safety (DPS).. For operators whose helmet use was known, helmet use was 91 to 93 percent from 1994 through August 1997 and dropped to 69 percent in September through December 1997, the first four months following the law change. In 1998, the first full year following the law change, helmet use was 57.0 percent during January-August and 57.8 percent during September-December.

Table 6. Helmet Use Among Injured Motorcycle Operators in Texas

Year	January-August		September-December	
	Number Injured	Percent Helmeted*	Number Injured	Percent Helmeted*
1994	2,335	91.3	1,043	93.2
1995	2,323	91.6	991	92.2
1996	2,278	92.4	1,001	93.1
1997	2,031	90.8	1,003	69.2
1998	2,326	57.0	1,030	57.8

* Operators with unknown helmet use excluded from helmet use percentages: 310 in 1994, 301 in 1995, 209 in 1996, 358 in 1997, and 270 in 1998.

The Texas DPS data also provide information on helmet use among young motorcyclists who were still required to wear helmets after the Texas law changed. Prior to 1998, the Texas crash data base included operator year of birth but not age. The operators tabulated in Table 7 are those included in Table 6 who would not have turned 21 in the year of their crash. For example, someone born in 1976 would have turned 21 sometime in 1997. Only persons born after 1976 are

included in the 1997 row of Table 7. In 1998, the DPS system was changed to record driver age directly. The Table 7 row for 1998, therefore, is for operators who were under the age of 21 at the time of their crash.

Table 7 shows that these young injured motorcycle operators had a somewhat lower helmet use rate under the universal helmet law than older injured operators. After the law change, their helmet use dropped, but not as much as for the older injured operators.

Table 7. Helmet Use Among Injured Young Motorcycle Operators in Texas

Year	January-August		September-December	
	Number Injured	Percent Helmeted*	Number Injured	Percent Helmeted*
1994	333	83.9	186	85.6
1995	330	84.0	137	87.3
1996	268	85.8	131	90.2
1997	230	82.7	125	78.8
1998	288	64.0	120	64.3

* Operators with unknown helmet use excluded from helmet use percentages: 47 in 1994, 41 in 1995, 24 in 1996, 40 in 1997, and 21 in 1998

Texas fatality data provide a longer view on the effects of helmet laws on helmet use. Recall that Texas had a universal helmet law in force from January 1968 through August 1977, a law covering only riders under 18 from September 1977 through August 1989, a universal helmet law again from September 1989 through August 1997, and a law covering only young, untrained, and uninsured riders after September 1, 1997. From 1975 through 1998, the months of January through August had universal helmet laws in place 11 times and not in place 13 times, while the months of September through December had universal laws in place 10 times and not in place 14 times. Table 8 shows the average number of motorcycle operator fatalities by month when the universal laws were or were not in effect and the percentage of the fatally injured operators who were helmeted.

Table 8 shows that helmet use was substantially higher when universal helmet laws were in effect. For example, helmet use by operators killed in Januaries was 87 percent when there was a universal law and 33 percent when there was not. Table 8 also shows for each month, that the average number of operators killed was lower when universal laws were in effect than when they were not. In addition, the Table shows how operator fatalities vary by season: higher in summer months and lower in winter months.

Figure 9 plots the monthly helmet use data of Table 8. It shows how helmet use rises and falls depending on whether a universal helmet law is in effect.

Table 8. Average Number of Operators Killed and Percent Helmeted in Texas for Months With and Without a Universal Helmet Law, 1975-1998

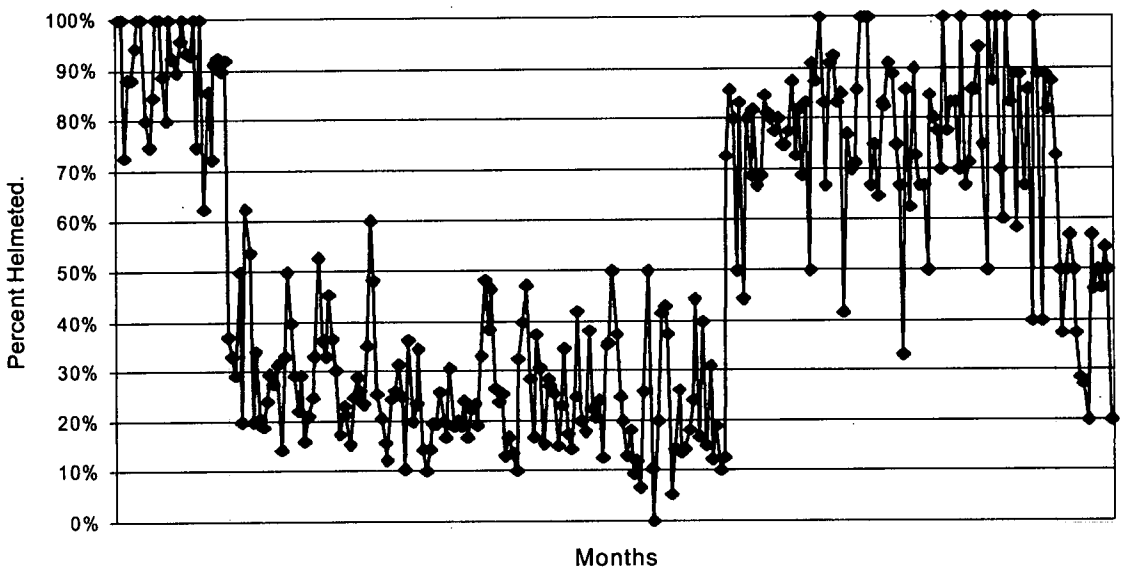
	Average Number of Operators Killed		Percent Helmeted	
Month	Universal Helmet Law	No Universal Law	Universal Helmet Law	No Universal Law
January	6.5	9.4	87	33
February	6.1	11.0	78	37
March	10.1	21.3	83	31
April	12.2	29.8	78	25
May	10.7	32.5	81	21
June	14.5	28.7	84	20
July	16.1	33.8	79	19
August	14.3	35.4	89	19
September	14.9	30.0	78	25
October	13.3	22.1	84	34
November	8.8	17.3	80	32
December	5.6	13.4	75	28

Source FARS 1975-1998

Summary

In both states, universal helmet law repeal clearly led to prompt decreases in helmet use. Observed helmet use in both states dropped within a year from over 95 percent to 52 - 66 percent. Helmet use among treated or injured motorcyclists in both states dropped by about 25 percentage points during the first four or five months following repeal. Helmet use among young injured motorcycle operators in Texas, who were still required to wear helmets after the law change, also dropped immediately after the law change and continued to drop the next year.

Figure 9. Percent of Fatally Injured Texas Motorcycle Operators Helmeted by Month, 1975-1998



Shaded areas contain months without universal helmet law.

VI. FATALITIES AND INJURIES

FATALITIES

Arkansas

Arkansas has relatively few motorcycle fatalities. During the period from 1975 to 1998, Arkansas averaged 24 motorcycle operator fatalities annually compared to 222 annually in Texas. Motorcycle operator fatalities during the winter months are almost nonexistent. Figure 10 plots annual fatalities; data are found in Table 9. Note that the small absolute number of fatalities each year means that there can be large relative changes from year to year quite by chance. For example, fatalities jumped 235% in 1983, from 17 in 1982 to 40. Fatalities then dropped 35% back to 26 in 1984. Overall, Arkansas motorcycle operator fatalities had been decreasing gradually since the early 1980s in line with the national trend. Prior to 1998, they had not exceeded 21 annually since 1990, while only two years before 1990 had fatality counts below 20. Arkansas had a universal helmet law in force throughout this period until August 1, 1997. In 1998, fatalities rose to 23.

Figure 10. Arkansas Operator Fatalities
(FARS)

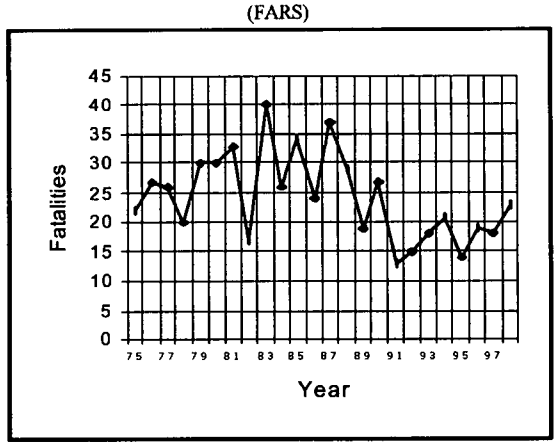


Figure 11. Arkansas Operator Fatality Rates
(FARS and FHWA)

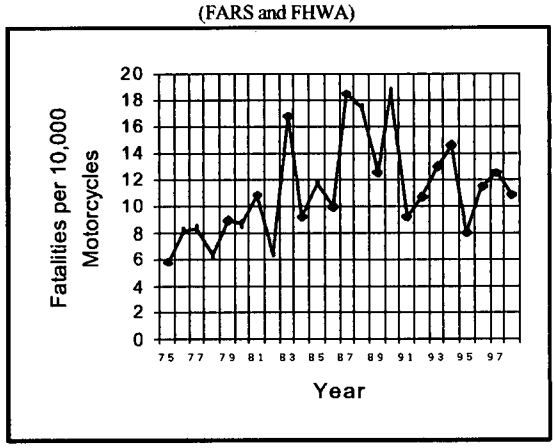


Figure 11 shows the Arkansas trend of fatalities per registered motorcycle; again, data may be found in Table 9. As with the fatality counts, the fatality rates are quite erratic from year to year. Overall, Arkansas fatality rates are somewhat higher in recent years than before about 1985.

There were 5 motorcycle operator fatalities in Arkansas from August through December 1997, the first five months following the law change. Table 10 gives motorcycle operator fatalities for the 1996, 1997 and 1998. The 5 post-law fatalities in August through December 1997 are substantially less than the 11 from the same months of 1996, but with such small numbers the difference is not statistically significant and may have occurred by chance. The January-July total in 1998 (16) was higher than in the two years earlier, while the August-December 1998 total remained below the comparable period in 1996.

Table 9. Arkansas and Texas Motorcycle Operator Fatalities and Fatality Rates, 1975-1998

Year	Arkansas Operator Fatalities	Fatalities per 10,000 Motorcycles	Texas Operator Fatalities	Fatalities per 10,000 Motorcycles
1975	22	5.95	167	6.10
1976	27	8.16	156	5.78
1977	26	8.29	232	8.12
1978	20	6.37	260	11.87
1979	30	8.97	286	9.81
1980	30	8.78	323	10.21
1981	33	10.84	372	11.00
1982	17	6.54	340	10.07
1983	40	16.80	312	9.56
1984	26	9.23	314	10.05
1985	34	11.77	321	11.42
1986	24	9.95	339	13.43
1987	37	18.43	246	10.71
1988	29	17.46	261	12.33
1989	19	12.55	207	10.81
1990	27	18.55	176	10.10
1991	13	9.29	112	6.05
1992	15	10.79	119	7.25
1993	18	13.03	136	9.46
1994	21	14.61	110	7.49
1995	14	8.13	112	8.61
1996	19	11.54	101	6.99
1997	18	12.58	111	8.62
1998	23	10.92	132	8.85

Source: FARS; operators of mopeds, off-road motorcycles, motor scooters, etc., are excluded

Table 10. Arkansas Motorcycle Operator Fatalities

Year	January-July	August-December
1996	8	11
1997	13	5
1998	16	7

Texas

Texas motorcycle operator fatalities and fatality rates also are given in Table 9 and are plotted in Figures 12 and 13. With about ten times more fatalities annually than Arkansas, the Texas plots are much smoother. Texas operator fatalities rose in the late 1970s, were roughly constant through 1986, dropped sharply through 1991, and have remained quite constant since. Fatality rates changed similarly but more abruptly, rising quickly from 1976 to 1978 and dropping equally quickly from 1988 to 1991. Recall that Texas had a universal helmet law in force from January 1968 through August 1977, a law covering only riders under 18 from September 1977 through August 1989, a universal helmet law again from September 1989 through August 1997, and a law covering only young, or older untrained or uninsured, riders after September 1, 1997. Figures 12 and 13 clearly show lower fatality counts and rates when a universal helmet law was in force.

Figure 12. Texas Operator Fatalities
(FARS)

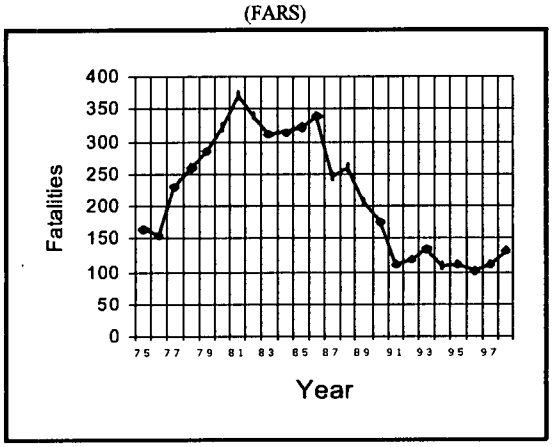
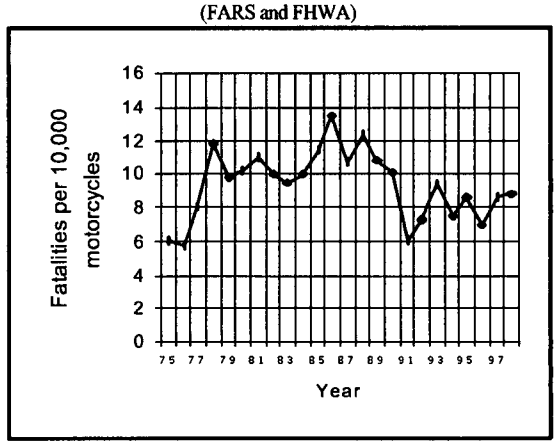


Figure 13. Texas Operator Fatality Rates
(FARS and FHWA)



Texas motorcycle operator fatalities for 1996, 1997 and 1998 are given in Table 11.

Table 11. Texas Motorcycle Operator Fatalities

Year	January-August	September-December
1996	70	31
1997	73	33
1998	86	46

The Table shows that in the first four months following repeal of the universal helmet law (September-December 1997) motorcycle operator fatalities in Texas did not change appreciably from the same period a year earlier. In 1998, however, the annual total of operators killed (132) was 31 percent higher than the number killed in 1996 (101). Increases took place in both the January-August and September-December periods.

INJURIES

Arkansas

Arkansas EMS Pre-Hospital Care data provide a better source of helmet use data on injured motorcyclists than police records. The EMS data include all motorcycle crashes where an EMS response was made except for crashes in Little Rock. In contrast to police reports, EMS data show whether an injured motorcyclist suffered a head injury. Table 12 presents basic information from Arkansas for 1996, 1997 and 1998. Similar data for 1996-1997 were obtained from the neighboring state of Oklahoma, which has had a helmet law applicable only to riders under age 18. These data are shown in Table 13.

In both 1996 and 1997, Arkansas' universal helmet law was in effect during the months of January-July. Table 12 shows that the number of injured motorcyclists was very slightly higher in 1997 than in 1996 (279 compared to 276, an increase of 1 percent). Helmet use dropped slightly and the proportion of motorcyclists with head injuries increased slightly in 1997. The universal helmet law was not in effect in 1998. In the January-July 1998 period, the number injured motorcyclists (313) was 12 percent higher than the 279 injured in the same period in 1997. Also in January-July 1998, helmet use among those injured fell to 29.1 percent from 53.0 percent a year earlier; the number of motorcyclists sustaining head injury increased by 77 percent (56 to 99) and the percent of those sustaining head injury increased to 31.6 percent from 20.1 percent in the same period in 1997.

Arkansas' universal helmet law was in effect during August-December in 1996 but not in 1997 or 1998. Table 12 shows that in 1997 the number of injured motorcyclists increased 24 percent, from 168 in 1996 to 209 in 1997, helmet use decreased substantially from 58 percent in

August-December of 1996 to 34 percent during August-December 1997. The number of motorcyclists with head injuries rose 56 percent from 36 to 56. The proportion of injured motorcyclists with head injuries increased from 21 percent to 27 percent. In the August-December period of 1998, the number of injuries continued to increase and the percentage of the injured who were helmeted continued to decline. The number of victims sustaining head injuries was the same as the year earlier while the percentage of the injured sustaining head injuries was lower than in 1997 but higher than in 1996. In Arkansas in 1998, 12 percent of injured helmeted motorcyclists sustained a head injury compared to 35 percent of unhelmeted motorcyclists.

Table 12. Arkansas EMS Motorcyclist Cases

	January-July			August-December		
	1996	1997	1998	1996	1997	1998
Number Injured	276	279	313	168	209	238
Percent Helmeted	55.8	53.0	29.1	57.7	33.5	29.8
Number with Head Injuries	51	56	99	36	56	56
Percent with Head Injuries	18.5	20.1	31.6	21.4	26.8	23.5

Data exclude Little Rock

Oklahoma, whose helmet law applies only to riders under the age of 18 since 1976, had quite different results. In January through July 1997 compared to 1996 the number of injured riders increased substantially, as did helmet use among those injured. The number of head injuries was about the same, while the proportion with head injuries decreased. During the last five months of 1997 compared to 1996 the number of injured motorcyclists decreased slightly, helmet use increased, and both the number and proportion of motorcyclists with head injuries decreased. In Oklahoma, 21 percent of helmeted motorcyclists sustained head injury compared to 51 percent of unhelmeted motorcyclists. Arkansas' experience with head injury cases is becoming more like its neighbor, Oklahoma.

Table 13. Oklahoma EMS Motorcyclist Cases

	January-July		August-December	
	1996	1997	1996	1997
Number Injured	140	189	128	116
Percent Helmeted	39.8	47.2	40.0	52.4
Number with Head Injuries	61	63	41	32
Percent with Head Injuries	43.6	33.3	32.0	27.6

Texas

Texas police crash reports record all crashes in which a motorcyclist was injured. These reports were the best source of data on helmet use among injured motorcyclists. Table 14, repeated from Chapter V, shows the number of motorcyclists who were injured in crashes (including those fatally injured) during January-August and September-December for 1994-1998. The universal helmet law was in effect through August 1997 and not in effect thereafter. There was an average of 2,314 injured motorcyclists annually in 1994-1996 during the 8-month period January-August and an average of 1,012 in the 4-month period September-December. In 1997, while the universal helmet law was in effect, the number of injured motorcyclists in January-August dropped to 2,031, which is 12 percent lower than the average for the previous three years. In September-December, when the universal law was no longer in effect, there were 1,003 injured motorcyclists, virtually the same as the three-year average. In 1998, injuries during January-August returned close to the historic average and the September-December total again was virtually unchanged.

Table 14. Injured Motorcycle Operators in Texas

Year	January-August		September-December	
	Number Injured	Percent Helmeted*	Number Injured	Percent Helmeted*
1994	2,335	91.3	1,043	93.2
1995	2,323	91.6	991	92.2
1996	2,278	92.4	1,001	93.1
1997	2,031	90.8	1,003	69.2
1998	2,326	57.0	1,030	57.8

* Operators with unknown helmet use excluded from helmet use percentages: 310 in 1994, 301 in 1995, 209 in 1996, 358 in 1997, and 270 in 1998.

The Texas police crash reports do not show whether an injured motorcyclist had a head injury. They do report injury severity as estimated by law enforcement on a 4-point scale: fatal, A (severe -- incapacitating), B (minor -- nonincapacitating), and C (possible) injury. Table 15 separates the injured motorcycle operators of Table 14 by police-reported injury severity. The table shows clearly that after the law change helmet use was lower for operators at all injury levels than in the previous periods under the universal helmet law. Helmet use in September-December 1997 injuries was lower than in the first eight months of the year and during the same period of 1996. Helmet use in 1998 was lower than in comparable periods of earlier years. In general, the more severe injury levels showed greater helmet use decreases.

From Table 15 the change from the 1994-1996 average to 1998 can be calculated for injuries at each severity level. Table 16 presents the results. In January through August 1998, the number of injured operators at each injury level, except A-injuries, increased compared to the 1994-1996 average. The percentage change was greatest for fatalities while small increases occurred in B and C-injuries. A-injuries declined by nine percent. In September through December 1998, a similar pattern was found with increases occurring in fatal, B and C-injuries while A-injuries declined.

Table 15. Injury Severity of Injured Motorcycle Operators in Texas

Fatalities

Year	January-August		September-December	
	Number of Fatalities	Percent Helmeted	Number of Fatalities	Percent Helmeted
1994	77	72.0	33	78.8
1995	69	78.3	43	81.4
1996	70	82.9	31	74.2
1997	73	78.3	33	48.5
1998	86	41.0	46	45.5

A Injuries

Year	January-August		September-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1994	650	88.9	303	92.1
1995	675	91.4	258	87.6
1996	618	91.0	305	94.1
1997	562	89.2	262	62.1
1998	592	53.3	262	54.6

Table 15. (Continued)

B-injuries

Year	January-August		September-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1994	1,087	91.8	463	92.7
1995	1,059	91.4	467	94.1
1996	1,074	93.3	426	92.0
1997	942	91.8	461	70.3
1998	1,106	57.3	471	59.1

C-Injuries

Year	January-August		September-December	
	Number Injured	Percent Helmeted	Number Injured	Percent Helmeted
1994	521	93.9	244	95.9
1995	520	92.6	223	94.0
1996	516	92.4	239	93.6
1997	451	93.0	247	76.9
1998	540	63.2	251	60.8

Table 16. Injured Motorcycle Operators, Texas, Change from 1994-1996 Average to 1998

Injury level	January-August	September-December
Fatal	+ 19 percent	+28 percent
A-injury	- 9 percent	- 9 percent
B-injury	+3 percent	+ 4 percent
C-injury	+4 percent	+ 7 percent
Total	+ 1 percent	+2 percent

Summary

In the first full year (1998) following repeal of their universal motorcycle helmet laws, both Arkansas and Texas experienced increases in motorcycle operator fatalities compared with the last year (1996) of the universal law. The number of these fatalities is small in Arkansas but increased by 21 percent going from 19 to 23. In Texas, motorcycle operator fatalities increased by 31 percent going from 101 in 1996 to 132 in 1998. Arkansas EMS data show an increase in the number of injured motorcyclists, the number of motorcyclists with head injuries, and the proportion of all injured motorcyclists with head injuries. Texas police crash report data show that the number of injured motorcyclists increased slightly in 1998 compared to 1994-1996. Lower-level injuries increased. Serious injuries decreased.

VII. INJURY COSTS

The Texas Trauma Registry, maintained by the Texas Department of Health, is a trauma reporting and analysis system. Records are entered into the system from hospital and prehospital providers. Approximately 210 hospitals in 1996 and 268 hospital in 1997 provided records to the system.

The Texas DPS file of motorcycle crashes was searched to identify crashes that occurred during September through December of 1996 and 1997 where the report indicated that Emergency Medical Services (EMS) were at the scene or that an involved motorcyclist had been transported to a hospital in some other manner. Descriptive data on these crashes (crash date, time, and location; motorcyclist birth year, race, gender, etc.) were recorded into a file that was forwarded to the Trauma Registry. Trauma Registry staff used the descriptive data for each case to match it with the Trauma Registry hospital case file for the same motorcyclist, when possible. The file of matched cases, with data combined from the DPS and Trauma Registry records, was used to provide summary statistical information.

The Trauma Registry was sent 662 crashes from 1996 and 596 from 1997 for matching. Of the 1996 crashes, 135 (20%) could be matched with a Trauma Registry case; of the 1997 crashes, 102 (17%) were matched. The low number of matches likely resulted from several factors. First, not all hospitals reported to the trauma registry for the years in question. Second, most cases (60%) contained a code that a motorcyclist had been transported to a hospital by private vehicle or some other means, but not by EMS. Many of these cases may not have been hospital admitted and, therefore, did not enter the hospital data set. Third, the police crash reports indicated that motorcyclists in approximately 6 percent of the crashes to which EMS responded were not transported to a hospital. Again, EMS cases not hospital admitted would not appear in the hospital data set. Finally, transcription errors and other inconsistencies between police and Trauma Registry records for a motorcyclist may have prevented a match.

Of the 662 cases for 1996 that were submitted to the registry for matching, 94 percent were helmeted. Helmet use was also 93 percent for the matched cases. Of the 596 cases for 1997 submitted to the registry, 66 percent were helmeted. In the matched cases, helmet use was 51 percent.

Among the matched cases for 1996, 18 percent had traumatic brain injury. The comparable figure for the 1997 matches was 25 percent. As just noted, almost all of the 1996 victims were helmeted Helmet use was 30 percent among the 1997 victims with traumatic brain injury and was 58 percent among those who sustained other types of injury.

Table 17 shows the mean and median dollar amounts of billed hospital charges for cases with and without traumatic brain injury for the 1996 and 1997 matched cases. The table shows a large increase in hospital charges for traumatic brain injury cases in 1997 compared with 1996. The average cost per case increased by 75 percent, from $18,418 to $32,209. The median cost

increased by more than 300 percent, from $4,585 to $22,531. The table also shows that the average cost of treating injured motorcyclists who did not suffer traumatic brain injuries declined slightly from 1996 to 1997 and the median treatment cost for these motorcyclists was essentially unchanged. The data in the table for 1996 are based on 13 cases of traumatic brain injury and 78 cases sustaining other injuries. The 1997 data are based on 15 cases of traumatic brain injury and 47 cases of other types of injuries.

Table 17. Billed Hospital Charges for Motorcycle Crash Injury Cases

Injury Type	Case Cost	1996 (Sept. - Dec.)	1997 (Sept. - Dec.)
Traumatic Brain Injury Cases	Average	$18,418	$32,209
	Median	$4,585	$22,531
Other Injury Cases	Average	$21,296	$19,126
	Median	$11,246	$11,789

Summary

The matched cases from the Texas Trauma Registry for the first four months following universal helmet law repeal compared to the same four months of the previous year show:

- Helmet use declined by more than 40 percentage points.
- Traumatic brain injuries increased to 25 percent from 18 percent.
- Treatment costs for traumatic brain injury cases increased substantially while treatment costs for other cases did not change markedly. The number of cases involved is not large, however.

The relatively low matching rate means that these conclusions from the matched cases may not hold for all injured motorcyclists. However, the Trauma Registry data do provide evidence that helmet use decreased, brain injuries increased, and treatment costs increased following the Texas universal helmet law repeal.

VIII. CRASH CASE STUDIES

To find examples of motorcycle crashes that occurred following the helmet law changes, efforts were made to identify and contact selected motorcyclists who had been injured and relatives or friends of motorcyclists who had been killed in crashes. First, the dates, times, and locations of motorcycle injury and fatal crashes were produced from the Arkansas and Texas crash data files. Then, hard copy police crash reports were requested from law enforcement agencies in locations with more than one crash. Some agencies were unable to release crash reports in response to general inquiries. Others required more detailed information, such as a report number, in order to retrieve a report. Others provided the requested crash reports.

Arkansas provided 9 police reports and Texas provided 51, for a total of 60. Three of the reports described crashes in which two motorcycles were involved, so 63 motorcycles were involved in these crashes. In addition to the motorcycle operators, 10 motorcycle passengers were involved, so the reports covered a total of 73 riders. Six of the motorcyclists were fatally injured while the remainder sustained various nonfatal injuries. Thirty riders wore helmets and 43 did not.

Information was obtained for only a few of these motorcyclists. Some could not be located; others were unwilling to provide information. The crashes described below are those for which some useful information was obtained. They are a small fraction of all fatal and injury crashes in Arkansas and Texas during the months following their helmet law changes.

Fatal Crashes

Study team members attempted to contact friends and family members of the six fatally-injured motorcyclists for which police reports were provided but were successful in only one crash involving two fatalities. Information on the other four fatalities comes from police reports only.

One of the two fatally-injured helmeted riders was wearing a "half helmet," damaged in the crash, and the police officer noted that he was not sure whether or not it met federal standards. The motorcycle operator was evidently hard on the throttle of his old Harley Davidson motorcycle when he crashed. He was in the process of passing a line of slow-moving cars in a no passing zone when the car that was holding up the line turned left into him, just as he pulled even with the car. He was thrown to the roadside across the left leg of the intersection.

The other crash in which a helmeted rider was killed was very severe, the only direct frontal crash among the fatalities. The motorcycle crossed the centerline on a blind curve and struck a car head-on. The crash force was sufficient to deflect the car into the oncoming lane, where it hit a third vehicle which had been traveling behind the motorcycle. Even though both the 26 year old motorcycle operator and his 25 year old wife wore helmets with full face masks, he received incapacitating injuries and she was pronounced dead at the scene.

Two of the four unhelmeted fatalities occurred in a single crash. An aunt of the fatally injured passenger was interviewed.

She said her 28 year old nephew was a passenger on a 550 cc Yamaha Maxim, owned and operated by his 29 year old brother-in-law. It was December, 1997 in a town in central Texas, about 10 weeks after Texas repealed the law requiring all motorcycle riders to wear helmets, and neither the operator nor the passenger was wearing a helmet. The operator died at the crash site and the passenger was pronounced dead at the hospital emergency room. Both riders suffered severe head trauma in addition to other injuries.

There was testimony at the manslaughter trial of the driver of a van involved in the crash that the van driver might have turned left in front of the oncoming motorcycle intentionally. A witness in a car following the motorcycle testified that the van turned suddenly and crossed at least two lanes before being struck in the right rear by the motorcycle. The 20 year old van driver was unlicenced and an illegal alien. He did not stop to give aid. An officer responding to the crash followed a trail of liquid and discovered the damaged van in an alley where he spotted the driver and three teen aged female passengers outside the van and a fourth young female passenger inside it with serious facial injuries. The van driver, who had a BAC of .063, was charged with two counts of manslaughter for causing the deaths of the motorcycle riders by failing to yield while turning left. He was acquitted in the death of the motorcycle operator (who had a BAC of .22) but convicted in the death of the passenger. His sentence was suspended and he was deported.

The motorcycle passenger did not violate any laws but was the victim of two mistakes: riding without a helmet and accepting a ride with his brother-in-law who had been drinking. According to the aunt, a former victim assistance specialist at the local police department, her nephew's brother-in-law was one of those people who shows no outward signs when he has been drinking, so it was an understandable mistake.

Although he was a passenger on that night, he always loved motorcycles and had owned several since he was licensed to drive. His aunt says he was a sporadic helmet user, wearing one if he was taking a trip or out on the freeway but not wearing a helmet when riding around the neighborhood.

At the time of the crash, he was divorced and living temporarily at his sister's home. He had a three year old son whom he loved and spent as much time with as possible. His aunt describes him as a "good kid, good looking, sweet, and gentle." She tells how he spent many hours helping her to care for her daughter, who required months of constant attention after she had been very nearly killed by her enraged husband. Her point was that her nephew was a very

caring person, with a strong sense of duty to his family, all of whom miss him dreadfully.

The central Texas town also was the location of another of the fatal unhelmeted crashes. The crash occurred in January 1998 on a Sunday afternoon..

> The crash was a single vehicle "ran off road", involving a 1994 Harley Soft Tail, owned and operated by a 41 year old airline pilot. The motorcycle failed to negotiate a slight curve in a four lane divided highway. The police report shows that the bike ran off the left side of the roadway and continued running in the grassy median until it struck a light post. The investigating officer concluded that failure to control speed and operating under the influence of alcohol were contributing factors.

The fourth unhelmeted fatality was a passenger in a crash in another Texas town, at 2:30 am on a Saturday. According to a newspaper article, the 38 year old operator sustained incapacitating injuries and his 24 year old passenger was killed.

> The motorcycle was a 1990 Harley Electraglide. The crash occurred on a wide, two-lane roadway with parking allowed on both sides. The motorcycle failed to negotiate a curve to the left and struck a car parked off to the right side of the road. The investigating officer noted failure to control speed as a contributing condition and under the influence of alcohol as another factor that may or may not have contributed. (Although a blood sample was taken from the operator, the report contains no alcohol test results.)

Non-fatal Crashes

A 27 year old electronics technician from Arkansas may be typical of many unhelmeted riders who sustained incapacitating injuries in a motorcycle crash after the helmet law was repealed.

> This rider said he usually wore a helmet, even after the law was repealed on August 1, 1997. About two weeks after it was legal to ride without a helmet, he was going for a ride in the country with a woman he was dating at the time, and as he put it, "like an idiot, I didn't have a helmet on." The woman was not wearing a helmet either.
>
> He knew that it had become legal to ride without a helmet in Arkansas only two weeks before. He said he was "indifferent" to the issue of helmet law repeal, because he felt the previous law was reasonable, and he usually wore his helmet anyway. But it was a warm day, and he thought a helmet would have been uncomfortable. He also wanted to be able to converse with the woman, and helmets make that difficult. "Who would have thought," he said, "that I would

have a wreck?" He had been riding since he was a teen and had only one close call in all of that time.

They were still in town, riding at the 35 mph speed limit, when the driver of a car on a side street stopped at the stop sign, looked both ways, and then, incredibly, pulled out right in front of them. There was no time to take evasive action and the motorcycle hit the car broadside.

Both riders sustained incapacitating injuries. The operator had a gash on his head and a concussion which caused him severe head pain. Although he was released from the hospital the same day, someone had to call him every two hours for several days to make sure he did not lapse into a coma. He also sustained a compression fracture of a vertebra, which did not require surgery, but still gives him problems. He has difficulty bending and can't bring his legs up. He says it is mostly a problem when he participates in sports. The doctor categorizes it as a 10 percent disability. He also complains that he has frequent minor illnesses such as colds and flu since the crash. So far, his medical bills have been $5,300, and none has been paid because the insurance company covering the driver of the other vehicle, which was at fault, has not settled yet.

His passenger fractured four vertebrae and required emergency surgery. Her rehabilitation has taken longer. He thinks it was about nine months until she was able to walk again without the aid of a cane or crutches.

He said he does not ride a motorcycle on the street any more because he no longer trusts other drivers to see him. His cycling is now confined to a four wheel ATV, which he rides off-road. Having learned a lesson the hard way, he says he never rides without his helmet since the crash.

Another unhelmeted motorcyclist received head injuries in a complicated incident that involved two motorcycles and two other vehicles.

The crash occurred in a Texas city, at about 4:30 on a Sunday afternoon, at a merge point between a freeway exit ramp and a two-lane one-way frontage road. Two motorcyclists were on the freeway exit ramp; the first was helmeted and the second was not. A car in the left lane of the frontage road slowed down to let the lead motorcycle on the freeway ramp merge ahead of him and the car was hit from behind by a pick-up truck. The pick-up truck then veered left, crossed the divider between the frontage road and ramp, sideswiped the lead (helmeted) motorcyclist, and stopped in the path of the second (unhelmeted) motorcyclist, who struck the pick-up and was thrown over the top of the truck. Although the investigating officer classified injuries to both motorcyclists as non-incapacitating (B) injuries, the motorcyclist who was not wearing a helmet needed transportation to a hospital by EMS.

The unhelmeted rider, is a 41 year old field service technician and was riding a 1996 Harley Davidson. His wife, who was reluctant to give many details because there is an ongoing lawsuit, said that the driver of the truck that started the chain of events was talking on his cell-phone when he rear-ended the car. Her husband was thrown when he hit the truck, "rolled in a ball," and landed on his back. He suffered head injuries, including a concussion, and also had severe spinal injuries. The helmeted operator of the other motorcycle suffered only scrapes and bruises, because her bike went down and she skidded across the pavement without hitting anything.

Some of the unhelmeted riders escaped serious injury. A 33 year old Texas pharmacist, is one.

His 1996 Honda Goldwing collided with a car at an intersection in a large Texas city. Both the motorcyclist and the driver of the other vehicle claimed that they had a green light, so no citations were issued. Although he was not wearing a helmet, he suffered only a fractured left hand in the crash. When interviewed, he admitted that he felt lucky that he did not sustain any head injuries.

He said he was aware at the time that the state had repealed its helmet law about a month earlier. Although he claimed he always wore his helmet when the law required it, he felt, and still feels, that motorcyclists should have a choice of whether or not to wear a helmet. Despite his crash, he says he only wears his helmet occasionally, when riding in heavy traffic, when he feels the risk of a crash is higher than normal.

At least one rider, who was not seriously injured interpreted his crash as a wake up call, and started to wear a helmet. This rider believes he was "saved by the helmet" on his second crash.

He has walked away from two motorcycle crashes about two months apart, the first one less than two weeks after Arkansas repealed its universal helmet law. He lost control of his Kawasaki sports bike as a car cut in front of him and clipped his front wheel. Although the 36 year old rider was not wearing a helmet, he didn't hit anything, and his injuries were only minor abrasions, so-called "road rash".

He had been in favor of helmet law repeal and usually rode without his helmet when it was no longer required. He noted that most of his fellow sports bike riders continued to wear helmets, but he felt his peripheral vision was better without it. He occasionally wore a helmet when out on the open road but didn't bother wearing one on short trips, which he did not perceive as being very risky. He was only going out to visit a friend a few blocks away when he had his first crash.

After the first crash, his father, who also was interviewed, said he put some pressure on his son to buy a better helmet and to wear it. He even offered to pay for the $190 helmet. The son said he didn't resist a lot, because the crash convinced him that accidents can happen, and he felt lucky that he had not been hurt more seriously.

Both son and father are convinced that the helmet saved his life in the second crash, which occurred in late October, 1997, on a two-lane state highway in a rural Arkansas county. It was raining at the time and, although he was below the 55 mph posted limit, he said he had closed quickly on a car closely following a van at about 10 mph. The oncoming lane was clear when he pulled out to pass, but just as he was about even with the car, the van suddenly pulled left without signaling, in preparation for a left turn into a driveway. The motorcycle crashed into the van's rear bumper and he was catapulted through the van's rear window. The impact of the crash crushed the front fork of the motorcycle back to the engine. Thanks to the helmet, he suffered only a cut above one eye. He says, "if it were not for the helmet, my head would have been a squashed grape."

He has not ridden a motorcycle since the second crash but thinks he might in the future. He explains that the bike was totaled and he has been busy getting a better job as a car salesman and moving to a new town. When he does ride again, he says he will wear a helmet.

IX. CONCLUSIONS AND DISCUSSION

Conclusions

Motorcycle helmet use decreased substantially in both Arkansas and Texas after their universal helmet laws were dropped. Statewide surveys under the universal laws observed 97 percent helmet use in each state. By May 1998, nine months after the law change, observed helmet use was 52 percent in Arkansas and 66 percent in Texas. Helmet use among injured motorcyclists in both states dropped by about 25 percentage points during the first four or five months after the laws changed. Further declines took place in both states in 1998. Helmet use among young injured motorcycle operators in Texas, who were still required by law to wear helmets, dropped by about 10 percentage points.

Motorcyclist fatalities did not change significantly in either Arkansas or Texas in the 1997 months following their law change compared to the same months of 1996. However, in the first full year following repeal of the universal helmet laws, operator fatalities increased in Arkansas by 21 percent compared with 1996 and by 31 percent in Texas over these same periods.

Arkansas EMS data show an increase in the number of injured motorcyclists, the number of motorcyclists with head injuries, and the proportion of all injured motorcyclists with head injuries after the law change. Texas police crash report data show that the number of injuries increased slightly comparing 1998 with 1996.

Texas Trauma Registry data show that the proportion of treated motorcyclists with traumatic brain injuries increased and treatment costs for traumatic brain injury cases increased substantially following the law change. Treatment costs for other injury cases did not change markedly.

Discussion

GAO's review and the other studies summarized in Chapter II all conclude that universal helmet law repeal produces lower helmet use, more motorcyclist fatalities, and more serious head injuries. The experience in Arkansas and Texas is consistent with these conclusions. Arkansas and Texas data show unambiguously that helmet use dropped substantially. Fatalities increased. There is good evidence that serious head injuries increased.

The societal issue regarding motorcycle helmet laws is very clear and has not changed since GAO's 1991 summary. The accumulated evidence is overwhelming that helmet use reduces motorcyclist fatalities, injuries, and treatment costs and that universal helmet laws increase helmet use substantially. The price for these benefits is that individual actions are restricted: through a universal helmet law, society requires each motorcyclist to take an action -- wear a helmet -- that appears to affect only himself or herself. But a motorcyclist's injury or

fatality affects many others, directly and indirectly, as some of Chapter VIII's case studies illustrate. Family, friends, and co-workers must adapt to the personal consequences of an injury or fatality. Society as a whole bears many of the direct and indirect costs. These issues must be weighed against individual freedom of action.

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APPENDIX. STATE HELMET LAW HISTORY

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
Alabama	11-06-67	All riders.
Alaska	1-01-71	All riders. Repealed effective 7-01-76; helmet use required for riders under 18 and all passengers.
Arizona	1-01-69	All riders. Repealed effective 5-27-76; helmet use required for riders under 18.
Arkansas	7-10-67	All riders. Repealed effective 8-01-97; helmet use required for riders under 21.
California	1-01-85	Helmet use required for riders under 15 1/2. Effective 1-01-92 helmet use required for all riders.
Colorado	7-01-69	All riders. Repealed effective 5-20-77.
Connecticut	10-01-67	All riders. Not enforced until 2-01-74. Repealed effective 6-01-76. Effective 1-01-90 helmet use required for riders under 18.
Delaware	10-01-68	All riders. Repealed effective 6-10-78; helmet use required for riders under 19. Also required that a helmet be carried on the motorcycle for riders 19 and older.
District of Columbia	10-12-70	All riders.
Florida	9-05-67	All riders.
Georgia	8-31-66	All riders.

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
Hawaii	5-01-68	All riders. Repealed effective 6-07-77; helmet use required for riders under 18.
Idaho	1-01-68	All riders. Repealed effective 3-29-78; helmet use required for riders under 18.
Illinois	1-01-68	All riders. Repealed effective 6-17-69 after being declared unconstitutional by the State Supreme Court on 5-28-69
Indiana	7-01-67	All riders. Repealed effective 9-01-77. Effective 6-01-85 helmet use required for riders under 18.
Iowa	9-01-75	All riders. Repealed effective 7-01-76.
Kansas	7-01-67	All riders. Repealed effective 3-17-70; helmet use required for riders under 21. Effective 7-01-72 helmet use required for all riders. Repealed effective 7-01-76; helmet use required for riders under 16. Effective 7-01-82 helmet use required for riders under 18.
Kentucky	7-01-68	All riders. Repealed effective 7/15/98; helmet use required for riders under 21.
Louisiana	7-31-68	All riders. Repealed effective 10-01-76; helmet use required for riders under 18. Effective 1-01-82 helmet use required for all riders. Repealed effective 6-99; helmet use required for riders under 18.

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
Maine	10-07-67	All riders. Repealed effective 10-24-77. Effective 7-03-80 helmet use required for riders under 15.
Maryland	9-01-68	All riders. Repealed effective 5-29-79; helmet use required for riders under 18. Effective 10-01-92 helmet use required for all riders.
Massachusetts	2-27-67	All riders.
Michigan	3-10-67	All riders. Repealed effective 6-12-68. Effective 9-01-69 helmet use required for all riders.
Minnesota	5-01-68	All riders. Repealed effective 4-06-77; helmet use required for riders under 18.
Mississippi	3-28-74	All riders.
Missouri	10-13-67	All riders.
Montana	7-01-73	All riders. Repealed effective 7-01-77; helmet use required for riders under 18.
Nebraska	5-29-67	Never enforced. Declared unconstitutional by State Supreme Court and repealed effective 9-01-77. Effective 1-01-89 helmet use required for all riders.
Nevada	1-01-72	All riders.
New Hampshire	9-03-67	All riders. Repealed effective 8-07-77; helmet use required for riders under 18.

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
New Jersey	1-01-68	All riders.
New Mexico	5-01-67	Helmet use required for riders under 18 and all passengers. Effective 7-01-73 helmet use required for all riders. Repealed effective 6-17-77; helmet use required for riders under 18.
New York	1-01-67	All riders.
North Carolina	1-01-68	All riders.
North Dakota	7-01-67	All riders. Repealed effective 7-01-77; helmet use required for riders under 18.
Ohio	4-02-68	All riders. Repealed effective 7-01-78; helmet use required for riders under 18 and first year operators.
Oklahoma	4-27-67	All riders. Repealed effective 4-07-69; helmet use required for riders under 21. Effective 7-01-75 helmet use required for all riders. Repealed effective 5-03-76; helmet use required for riders under 18.
Oregon	1-01-68	All riders. Repealed effective 10-04-77; helmet use required for riders under 18. Effective 6-16-89 helmet use required for all riders.
Pennsylvania	9-13-68	All riders.
Puerto Rico	7-20-60	All riders.
Rhode Island	6-30-67	All riders. Repealed effective 5-21-76; helmet use required only for passengers. Effective 7-1-92 helmet use required for riders under 21 and first year operators.

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
South Carolina	7-01-67	All riders. Repealed effective 6-16-80; helmet use required for riders under 21.
South Dakota	7-01-67	All riders. Repealed effective 7-01-77; helmet use required for riders under 18.
Tennessee	6-05-67	All riders.
Texas	1-01-68	All riders. Repealed effective 9-01-77; helmet use required for riders under 18. Effective 9-01-89 helmet use required for all riders. Repealed effective 9-01-97; helmet use required for riders under 21 and older riders who have not completed a rider education course or do not have $10,000 medical insurance coverage.
Utah	5-13-69	Helmets required only on roads with speed limits of 35 mph or higher. Effective 5-08-77 helmet use required for riders under 18 on all roads.
Vermont	7-01-68	All riders.
Virginia	1-01-71	All riders.
Washington	7-01-67	All riders. Repealed effective 7-01-77. Effective 7-01-87 helmet use required for riders under 18. Effective 6-8-90 helmet use required for all riders.
West Virginia	5-21-71	All riders.
Wisconsin	7-01- 68	All riders. Repealed effective 3-19-78; helmet use required for riders under 18 and for all riders holding learner's permits.

State	Original Law Effective Date	Original Law Coverage; Subsequent Action; Current Law
Wyoming	5-25-73	All riders. Repealed effective 5-27-83; helmet use required for riders under 18.

Source: NHTSA

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 1, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 41	SECURITIES TRANSFER ON DEATH Representative Daniel Barefoot
HB 107	MOTORCYCLE SAFETY ACT Representative Rex Baker, Sponsor

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 1, 2001

The House Committee on Judiciary III met on Thursday, March 1, 2001, in Room 421 of the Legislative Office Building at 11:45 AM. The following members were present: Chairman Wayne Goodwin, Vice Chair Daniel Barefoot, Representatives Bonner, Cansler, Capps, Daughtry, Fox, Hensley and Holmes. Dianna Jessup, Karen Cochrane-Brown, and Brenda Carter, Committee Counsel were in attendance. A visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Barefoot was recognized to explain HB 41, A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Upon motion made by Representative Cansler, the Committee voted for a favorable report.

There being no further business, the Chair adjourned the meeting at 12:00 Noon.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

VISITOR REGISTRATION SHEET

Judiciary III — 3-1-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Schwenbeck	Randolph C.B.A.
JAMES Robinson	DAVIDSON CBA/ABATE
Roger Boger	Rowan County CBA/ABATE
John Lamy	ROWAN CO CBA/ABATE
Rev. Chas Williams	ROWAN CO. CBA/ABATE
Randy Norris	Columbus Co. CBA/ABATE
Ted H. Stover Sr.	Columbus Co. CBA/ABATE
WILLARD NORRIS	Columbus Co. CBA/ABATE
Deborah Allen	Johnston Co NC CBA/ABATE
MARK ALLEN	JohnstonCo NC. CBA/ABATE
Allen Hutton	Davidson Co. CBA-ABATE
MARK LITTLE	Randolph CBA
RON DEZZER	CBA - CARTERET - CRAVEN
Henry W. Harrison JR	806 SAND HILLS DR. NEW PORT, N.C.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 41
Corrected Copy 2/6/01

Short Title:	Securities Transfer on Death.	(Public)
Sponsors:	Representatives Barefoot; Alexander, Allen, Allred, Arnold, Bell, Bonner, Buchanan, Coates, Cox, Crawford, Culpepper, Cunningham, Davis, Dedmon, Esposito, Fox, Gibson, Goodwin, Haire, Hall, Hill, Holliman, Insko, Jarrell, Jeffus, Kiser, Luebke, McAllister, McComas, McComb, McLawhorn, Michaux, Mitchell, Oldham, Owens, Pope, Rayfield, Rogers, Shubert, Smith, Sutton, Tolson, Tucker, Underhill, Wainwright, Walend, Warner, Warren, Warwick, West, C.Wilson, G.Wilson, Wright, and Yongue.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 1, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of

intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, a security account, and a security entitlement as defined in G.S. 25-8-102.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"**§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"**§ 41-42. Registration in beneficiary form; applicable law.**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving

beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) This Article does not repeal or modify any provision of law relating to estate or inheritance taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary or contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr. SUB BENE Peter O. Brown'.

"**§ 41-50. Short title; rules of construction.**

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2.

"**§ 41-51. Application of Article.**

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

SECTION 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~decedent;~~decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 4. This act becomes effective October 1, 2001.

HOUSE BILL 41:
Securities Transfer on Death.

BILL ANALYSIS

Committee:	House Judiciary III Committee	**Introduced by:**	Rep. Barefoot
Date:	March 1, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Second Edition (Corrected Copy)		Committee Co-Counsel

SUMMARY:

*House Bill 41 would amend Chapter 41 - **Estates**, to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill also would rename the title of Chapter 41 as – **Estates and Interests in Property**.*

House Bill 41 is a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 46 other states.

CURRENT LAW:

Under current law securities can only be passed upon death by probate or by joint tenancy with right of survivorship.

BILL ANALYSIS:

House Bill 41 proposes to adds a new Article 4 to Chapter 41 of the General Statutes, entitled "The Uniform Transfer on Death (TOD) Security Registration Act. This act would allow the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner may revoke or modify this designation at any time up until death. Also this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and as such would not be part of the probate estate.

Some of the advantages provided by the bill appear to be: 1) provides an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; 2) avoids probate and probate fees; and 3) simplifies the process of changing names on securities after death. The bill makes it clear that this act does not affect claims creditors, who can still claim these securities if necessary to satisfy claims against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. The bill also makes it clear that this form of ownership does not affect estate or inheritance tax collection and that these securities would be counted as part of the taxable estate.

One change that would result from this bill would be a reduction in the collection of probate fees by the clerks of court. Probate fees are collected on all personal property that passes through the probate estate. Because these changes would transfer these securities outside the probate estate, probate fees would not be collected on the value of the securities transferred by this method.

Section 2 of this bill makes a conforming change to the statute governing the rights of creditors to collect estate debts from assets passing outside the estate. This statute is only triggered when other assets of the estate are insufficient to satisfy all claims.

Section 3 authorizes the Revisor of Statutes to include the Official Comments to the Uniform Act from the Uniform Commissioners with the published statutes.

EFFECTIVE DATE: The bill would take effect October 1, 2001, and would apply to persons dying on or after that date who had registered such a designation on their securities at anytime prior to their death. This will ratify the designations made by people before October 1, 2001, including people who may have made such designations under the laws of other states.

BACKGROUND:

This bill is a recommendation of the General Statutes Commission. Similar bills were introduced in the 1997 and 1999 Sessions of the General Assembly. In 1999, House Bill 112, which was virtually identical to this bill, was given a favorable report by the Judiciary II Committee and passed by the full House.

This summary was contributed to by Walker Reagan and Robin Johnson.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 41 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: House Judiciary III Committee

FROM: General Statutes Commission

DATE: February 14, 2001

RE: House Bill 41 (Securities Transfer on Death)

This bill enacts the Uniform TOD (Transfer on Death) Security Registration Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1989 and subsequently reviewed by the General Statutes Commission and its Trusts Drafting Committee. The Act permits the owner of an investment security (that is, stocks, bonds, mutual fund shares, security accounts, etc.) to designate another person to become owner of the security when the present owner dies, in a manner similar to insurance policies. The designation is completely revocable until the death of the owner, and it eliminates the need for probate of that particular security. Estate or inheritance tax liability is not affected. The Uniform Act is endorsed by the American Bar Association and the American Association of Retired Persons and has been enacted in at least 46 states, including every state that borders this State.

The Act offers owners of securities two significant advantages over the use of a joint tenancy when the owner wants nothing more than a nonprobate means of transferring ownership on death. The person named as TOD beneficiary has no ownership interest or right of control during the lifetime of the owner. Therefore, there are no income tax or gift tax consequences and the owner does not risk having the joint tenant cash the security and make off with the proceeds.

Please note that securities issuers and transfer agents with principal offices in states that have already enacted the Act are accepting securities registered in TOD form even from residents of states that have not enacted the Act.

Please note also the following specific points:

(1) Only a sole owner or multiple owners with right of survivorship can use the TOD registration process. The only type of multiple ownership with right of survivorship that can be created in a normal investment security under North Carolina law is a joint

tenancy with right of survivorship, although other types can be created in other states. Tenants in common cannot use the TOD designation. This limitation is found in the Uniform Act itself and is designed to prevent conflicting or divided beneficiary designations.

(2) The designated beneficiary or beneficiaries "take" on the death of the sole owner or the last surviving joint tenant. Multiple beneficiaries "take" as tenants in common.

(3) An issuer or transfer agent is not required to accept TOD designations and may establish the terms and conditions under which it will receive TOD registrations.

(4) This bill differs from the Uniform Act in five respects. First, it includes in the definition of "heirs" a specific citation to North Carolina's intestate succession statutes. Second, it includes in § 41-48 two non-Uniform subsections, (b) and (c), that are designed to protect the interest of creditors and the Department of Revenue. These provisions are similar to other provisions dealing with nontestamentary transfers on death such as joint bank accounts. Third, it omits an illustration and supporting language from § 41-49 that would have defined a particular, commonly used legal term ("per stirpes") in a way different from the usual meaning in this State, thereby avoiding a trap for the unwary. Fourth, it includes in § 41-50 a subsection (c) stating that the Act does not repeal G.S. 41-2.2 to avoid any argument that that section was partially repealed by implication. Fifth, it includes in the definition of "security" in § 41-40(9) a specific reference to security entitlements as defined in the revised Article 8 of the Uniform Commercial Code, which was enacted by the General Assembly in 1997.

Section 2 of the bill makes a conforming change to G.S. 28A-15-10(a), dealing with rights of creditors, and Section 3 authorizes the printing of official and drafters' comments.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 6, 2001

The House Committee on Judiciary III met on Tuesday, March 6, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bonner, Cansler, Capps, Crawford, Cunningham, Daughtry, Esposito, Fox, Hensley, Jarrell, Kiser, and Russell. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

HB 107 A BILL TO BE ENTITLED AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM, was continued from the last meeting. Dr. Jack Page, N.C. College of Emergency Physicians spoke opposing the bill. Joe Parker, Director of the Governor's Highway Safety Program spoke opposing the bill. Representative Barefoot proposes an amendment. Upon motion by Representative Barefoot, the amendment was adopted. Upon motion by Representative Michaux, the Committee voted to roll the amendment over into a Committee Substitute, give the Committee Substitute a favorable report, and give the original bill an unfavorable report.

There being no further business, the Chair adjourned the meeting at 12:45 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 6, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 107 MOTORCYCLE SAFETY ACT
Representative Rex Baker, Sponsor

Dr. Jack Page
NC College of Emergency Physicians

Joe Parker, Director
Governor's Highway Safety Program

ADJOURNMENT

VISITOR REGISTRATION SHEET

421 Judiciary III — 3-6-01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Parker	Governor's Highway Safety Program
W.N. Hilliard	NC College of Emergency Physicians
JACK PAGE, MD	NC COLLEGE OF EMERGENCY PHYSICIANS
Steven T Westerfield	CBA
Howard Coltrane	Randolph CBA
Buddy Strong	Randolph Co CBA
Charles McGhee	Independent
DAVID McGOWAN	Greenville NC
Rugn Boger	CBA Rowan County
CHRIS WILLIAMS	ROWAN CO. CBA/ABATE
Betty M. Plott	Rowan Co. CBA/ABATE
Michele Knighton	Carteret-Craven CBA
Smokey Colwell	Carteret-Craven CBA
John D Latham	Carteret-Craven CBA
Arnold Key	Sandhill HD E Randolph CBA
WILLARD NORRIS	Columbus Co. CBA
Teresa Stover	Columbus Co. CBA
Ted Stover	Columbus Co. CBA
Deborah Allen	CBA of NC Johnston County
MARK Seiler	CRAVEN CO. CBA
George Schoenberger	Randolph C.B.A
SAM MARTIN	Asheboro Hog Club
MARK Litte	Randolph CBA
David Gore	Raleigh CBA
Joy Barbour	Concerned Bikers Assoc./ABATE of N.C.
Mike Hodges	Raleigh, NC CBA/ABATE
Susan Harwell	CBA Charlotte
Allen Hutton	DAVIDSON Co. CBA / ABATE of NC

VISITOR REGISTRATION SHEET

JUDICIARY II — 3-6-01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jocelyn Stumbaugh Bear	Brunswick County Chapter NCCBA/ABATE
Deb Knox	Brunswick County Chapter CBA/ABATE
Candace Pettitt	Brunswick County
Michael Hinkle	Chatham Co. CBA/ABATE
Joe Kugler	Carteret/Craven CBA
Vinny Neumann	Chatham CBA
Will Duncan	Chatham CBA
James Robinson	Davidson CBA/ABATE
Mark Infield	Full Throttle Magazine High Point CBA
Molly Infield	Full Throttle Magazine High Point CBA
Elton Hodge	Buncombe CBA.
Charles Hodge	Buncombe Co CBA
Doris Weaver	NC CWA Political Council
Michael Jones	Teamster Local 391
Tom Zelenski	Chatham Co CBA
Ellie Page	Brunswich County CBA (HOG member)
Mark Dixon	Capitol Harley Davidson
Richard Wilkins	NCHRA
Carole Lawler	EGHS
Terry Portis	BIA
John Reler	BIA
Donnie Langley	US

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 107

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H107-ASW-1 [v.1]

Date _____,2001

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative

moves to amend the bill on page 1, line 22, by rewriting the line to read:
"helmet, pursuant to sub-subdivision a. of this subdivision and the".

SIGNED David W. Beaufort
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III.**

☐ Committee Substitute for
H.B. 107 A BILL TO BE ENTITLED AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO ADJUST THE FEE ON PRIVATE MOTORCYCLE REGISTRATIONS IN ORDER TO PROVIDE ADDITIONAL FUNDS FOR THE MOTORCYCLE SAFETY PROGRAM.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

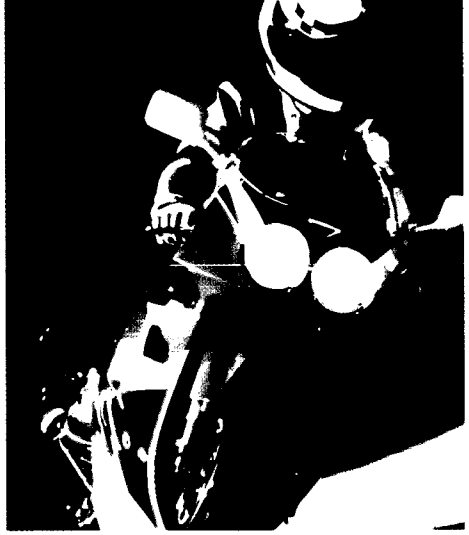
☐ With an indefinite postponement report, with a Minority Report attached.

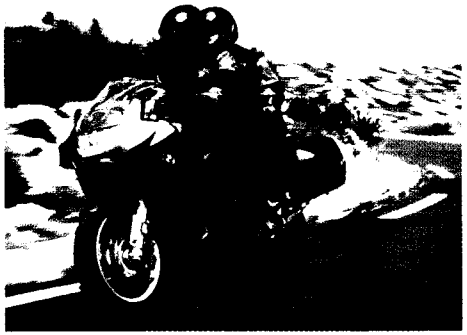
☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

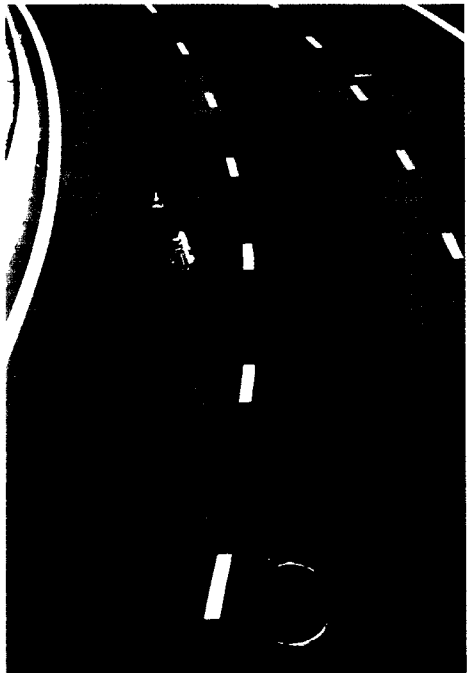
2/15/01

Without Motorcycle Helmets

We All Pay the Price







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A to **Motorcycle Safety**

Traffic crashes are a leading cause of death and disability in the United States. Motorcycle crashes claim the lives of over 2,100 riders each year. Per mile traveled, motorcyclists are 16 times more likely than passenger car occupants to die in a traffic crash and about four times as likely to be injured.[1] While only 20 percent of car crashes result in injury or death, that figure jumps to an astounding 80 percent for motorcycle crashes.[2]

As with other traffic safety programs, a comprehensive motorcycle safety program works to prevent crashes, reduce injuries during a crash, and provide rapid emergency medical services response and better treatment for crash victims.

Crash prevention components. Preventing crashes before they occur is a key component of a motorcycle safety program. Motorcycle safety crash prevention programs focus on four areas:

Delivering nationally recognized rider education programs taught by trained instructors to teach riders the basic knowledge and skills needed to safely operate a motorcycle on streets and highways.

Increasing the number of properly licensed motorcycle operators to insure that riders who have not completed a rider education course can demonstrate basic knowledge of riding and can safely perform basic handling skills.

Reducing alcohol and other drug involvement in motorcycling because riding while under the influence of alcohol and other drugs decreases an operator's ability to ride safely.

Supporting awareness activities to reach motorists who share the road with motorcyclists. Operators of other vehicles must be knowledgeable of the special characteristics of motorcycles and must use this knowledge to interact safely with these vehicles.

Injury prevention components. Despite the best prevention efforts, motorcycle crashes do occur. The majority of the crashes with other vehicles are not the motorcyclist's fault. During a crash, the most important factor in reducing injury is personal protection for the motorcyclist. Leather jackets, gloves, trousers, proper footwear, eye protection, and helmets provide this personal protection. Helmets are by far the motorcycle rider's most important safety equipment because they protect against injuries to the head and brain.

Why is injury prevention important during a crash? Consider some facts:

- More than 80 percent of all reported motorcycle crashes result in injury or death to the motorcyclist.[3]
- Head injury is a leading cause of death and serious injury in motorcycle crashes, which is why helmets that meet or exceed federal safety standards should always be worn.
- Research studies show that motorcycle helmets are 29 percent effective in preventing fatal injuries and 67 percent effective in preventing serious brain injury.[4, 5]

A helmet only works if a motorcyclist wears it, and the most effective means of increasing helmet usage is by enacting helmet laws that cover all riders -- universal motorcycle helmet laws.

Rapid emergency response. After a crash has occurred, an injured rider's life can depend on rapid and appropriate emergency medical response. Emergency medical service personnel provide life support at the scene and during transport to the optimal emergency care facility. Injury severity and time are critical to survival. Wearing a motorcycle helmet lessens the severity of head injuries and may give the emergency response team the extra time needed to save a life.

The Anatomy of a Motorcycle Crash

A motorcycle crash. A motorcycle crash is a complex event involving the interaction of human, vehicle, and environmental factors. While there is no "typical" motorcycle crash, what is "typical" is that a motorcycle crash is a violent event. More than 80 percent of all reported motorcycle crashes result in injury or death to the motorcyclist. The motorcycle itself provides no head injury protection to the rider or passenger. Ejection from the motorcycle is a common injury pathway. If a motorcycle comes to a sudden stop and the rider is ejected from the motorcycle, the rider will forcibly strike objects in the path as well as the ground.

Vehicle differences. A motorcycle lacks the crashworthiness and occupant protection characteristics of an automobile. An automobile has more weight and bulk than a motorcycle. It has door beams, a roof, airbags, and seat belts. It is also more stable because it is on four wheels. Because of its size, an automobile is easier to see. What a motorcycle sacrifices in weight, bulk, and other crashworthiness characteristics is somewhat offset by its agility, maneuverability, ability to stop quickly, and ability to swerve quickly when necessary.

Causes of motorcycle crashes. In 1996 there were 67,000 motorcycles involved in police-reported crashes, of which 40 percent (27,000) were single vehicle crashes.[6] Many of the causes of motorcycle crashes may be attributed to lack of experience or failure to appreciate the inherent operating characteristics and limitations of the motorcycle. These factors require motorcyclists to take special precautions and place more emphasis on defensive driving. A motorcyclist, for example, has to be more alert at intersections, where most motorcycle-vehicle collisions occur. About one-third of multi-vehicle motorcycle crashes are a result of other motorists turning into the path of the motorcycle. More than other vehicle drivers, motorcyclists must remain visible at all times, and anticipate what might happen. For example, motorcyclists must anticipate that drivers making left turns may not see them and prepare to make defensive maneuvers. They also must be more cautious when riding in inclement weather, on slippery surfaces, or when encountering obstacles on the roadway. Motorcyclists must place greater reliance on their helmet, eye protection, and clothing to reduce the severity of injury should they become involved in a crash. And they should attend a motorcycle training course to learn how to safely operate a motorcycle.

Approximately 43 percent of all fatal motorcycle crashes involve alcohol.[7] A motorcycle requires more skill and coordination to operate than a car. Riding a motorcycle while under the influence of any alcohol significantly decreases an operator's ability to operate it safely.

An estimated one-third of motorcycle operators killed in crashes are not licensed or are improperly licensed to operate a motorcycle.[8] Being licensed to operate a car does not qualify a person to operate a motorcycle. By not obtaining a motorcycle operator's license, motorcyclists are bypassing the only method they and the state licensing agencies have to ensure they have the knowledge and skills needed to safely operate a motorcycle.

The helmet at work. The single most important safety device a motorcyclist can have is a helmet. Motorcycle helmets have a hard outer shell that distributes the force of an impact to protect the skull and prevents objects from piercing it. The crushable inner liner limits the force of impacts by absorbing a portion of the energy that would otherwise reach the head and brain. As the helmet does its job, the number and severity of head injuries are significantly reduced.

Helmets cannot work if they are improperly designed. Federal safety standards determine the amount of force helmets should absorb and the amount of peripheral vision the helmets must allow. Only helmets that meet or exceed these standards should be worn.

Motorcycle Helmets Are Effective in Preventing Serious Brain Injuries

Helmets prevent brain injury. Motorcycle helmets save lives and prevent devastating and debilitating head injuries. Motorcyclists who ride without helmets run a significantly greater risk of death or permanent injury. The U.S. General Accounting Office (GAO) has the data that prove it.

"When I had my motorcycle crash, and suffered my head injury, it changed my life and it took a huge toll on my family. If anyone has the opportunity to reduce the number of head injuries, I would personally urge them to do whatever they can to spare another person from this ordeal."

—Doug Wilson, motorcycle crash victim, Maryland

GAO reviewed 46 studies of motorcycle helmets and helmet laws. Here's what they found:

- Helmeted riders have up to a 73 percent lower fatality rate than unhelmeted riders.[9]
- Helmeted riders have up to an 85 percent reduced incidence of severe, serious, and critical injuries than unhelmeted riders.[10]
- The GAO concluded: "Because there is convincing evidence that helmets save lives and reduce society's burden of caring for injured riders, Congress may wish to consider encouraging states to enact and retain universal helmet laws."[11]

In its *Report to Congress: Benefits of Safety Belts and Motorcycle Helmets,* NHTSA confirms the facts:

- Motorcycle helmets are 67 percent effective in preventing brain injuries.[12]
- Unhelmeted motorcyclists are over three times as likely to suffer a brain injury as were those who were helmeted.[13]

Universal Helmet Laws

Reduce Injuries and Save Lives

Motorcycle helmets clearly work to reduce injuries and fatalities among motorcyclists. That's why all motorcyclists should wear helmets and why all states need a helmet law that covers all riders. Helmet laws are the way to achieve high helmet use.

> **"A physician dreams about having the opportunity to save as many lives as legislators save with the single act of passing a universal motorcycle helmet law."**
>
> —Dr. Tilman Jolly, M.D. *Associate Professor,* Department of Emergency Medicine
> The George Washington University Medical Center.

Helmet laws translate into lives saved. Helmet laws increase helmet usage which in turn saves lives and reduces head trauma. This has been proven numerous times through state fatality data (including Illinois,[14] California,[15] Washington,[16] and Louisiana[17]) that allowed comparison of deaths and injuries before and after helmet laws were enacted. The most accurate reflection of a state's helmet use law is through the comparison of that state's motorcycle crash-related fatalities before and after enactment or repeal a helmet law for all riders.

Each state's data showed approximately the same trend:

- When universal helmet laws are enacted, helmet use increases, and fatalities and serious injuries decrease.
- When these laws are repealed, helmet use decreases, and injuries and associated costs increase, far exceeding the number of new motorcycles registered.
- Motorcyclist fatalities increase when a helmet law is repealed.

These results are consistent in every state where studies on the effectiveness of motorcycle helmet laws have been conducted. Additionally, data show that age-specific laws do not protect that group of riders that are historically victims in a fatal crash: those over the age of 21 years.

The data continue to prove that motorcycle helmet laws save lives. Government and privately conducted studies support the effectiveness of helmets and the impact of helmet laws in reducing the number of serious injuries and fatalities. The results of some of these studies are cited below.

NHTSA estimates that in 1996 helmets saved 490 motorcyclists' lives. If all motorcyclists in all 50 states and the District of Columbia had worn a helmet, that number would have been 769.[18]

NHTSA estimates that from 1984 to 1996 helmets saved the lives of 7,940 motorcyclists. If all motorcyclists in all 50 states and the District of Columbia had worn a helmet during this time period, the number of lives saved would have been 14,505.[19]

Fatality Analysis Reporting System (FARS) data indicated that helmets are 29 percent effective in reducing fatalities in motorcycle crashes.[20]

A study completed at the University California - Los Angeles (UCLA) determined that statewide motorcycle fatalities declined 40.3 percent from 1991, before the California motorcycle helmet law for all riders was in effect, to 1993, the second full year that California's law was in effect. 239 lives were saved over the same period as a result of the helmet law.[21]

In the same UCLA study, the number of injured riders decreased over 30 percent in 1992 and 1993, the first two years of the California law, when compared to 1991 (pre-law). The number of riders admitted to the hospital decreased about 35 percent both in 1992 and 1993, which is proportionally more than riders treated in the emergency department and released. The number of riders brought to emergency departments decreased about 25 percent for both 1992 and 1993.[22]

A study revealed that 24 out of 26 states that repealed their universal helmet laws experienced an average 25 percent increase in motorcycle fatalities.[23]

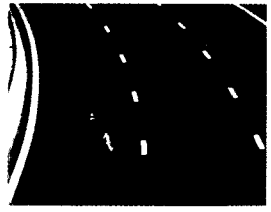
The death rate for motorcyclists rose 61 percent the year following Kansas' repeal of its universal helmet law.[24]

A privately-conducted study reported a 40 percent increase in fatally injured motorcyclists in states repealing their universal helmet laws.[25]

DATA PROVE: HELMET USE REDUCES FATALITIES.

Nearly of **Motorcyclists Comply** With

A universal motorcycle helmet law is an effective and efficient traffic safety law. When a state passes a helmet law covering all riders, helmet use rates rise nearly to 100 percent. One reason is that law enforcement officers can easily determine if a motorcyclist is wearing a helmet. But states need the right law – a law requiring everyone who rides to wear a helmet. Age-specific laws that require only minors to wear helmets have little or no impact and are virtually impossible to enforce. Likewise, helmet laws for all riders that are tied to licensing or rider education requirements are equally difficult to enforce and create burdens on law enforcement.



Helmet laws immediately increase helmet use. When a helmet law is enacted, nearly all motorcyclists wear helmets. Statistics support the effectiveness of universal helmet laws.

In a review of nine separate studies, the U.S. General Accounting Office (GAO) found:

- 92 percent to 100 percent helmet use in states with helmet laws covering all riders.[26]
- 42 percent to 59 percent helmet use under limited laws.[27]

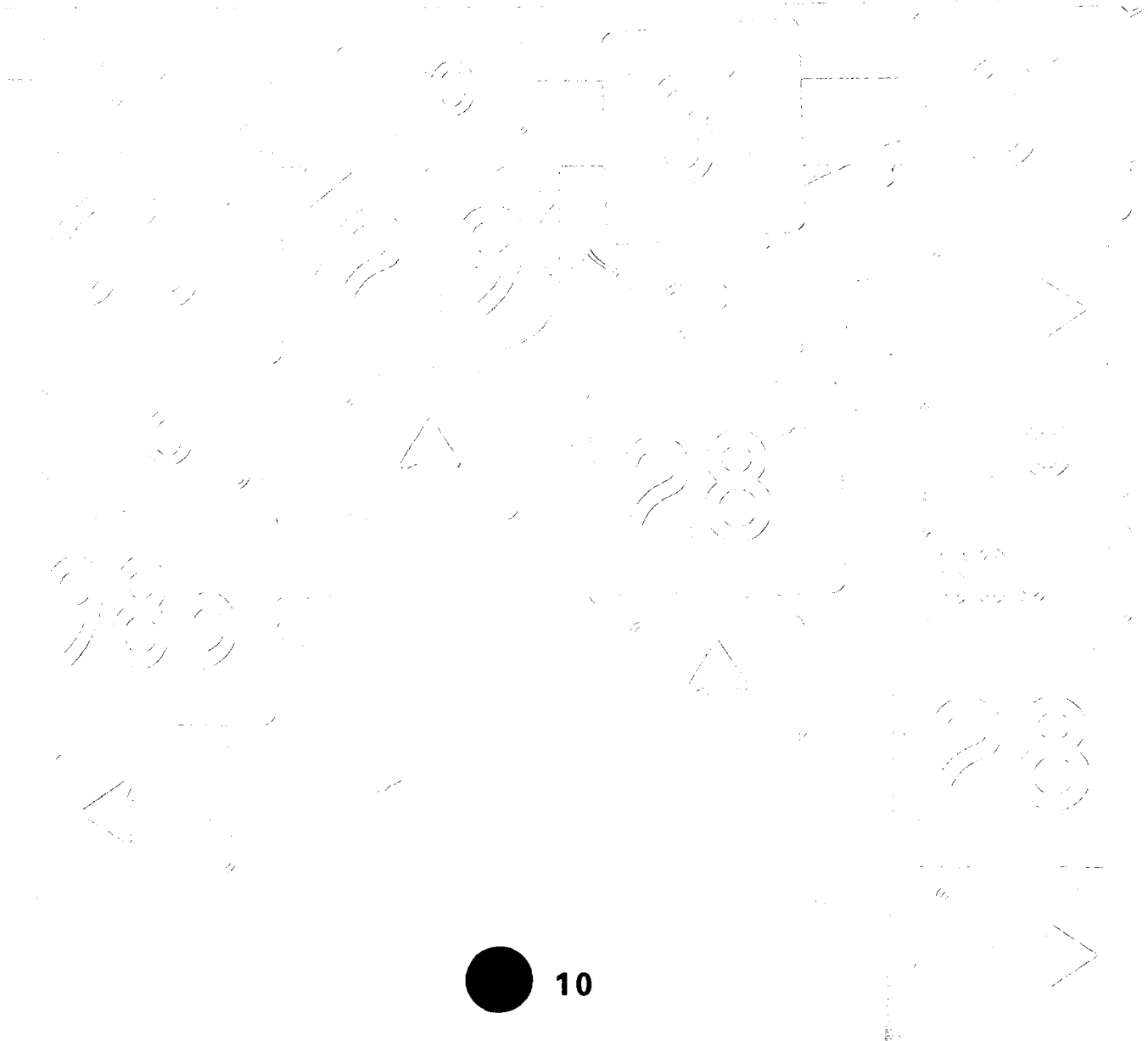
In addition, the National Highway Traffic Safety Administration found the following in observational studies:

- In universal helmet law states, helmet use is close to 100 percent.[28]

  In states without helmet use laws or with laws that only cover a specific segment of the population, helmet use is between 28 percent and 40 percent.[29]

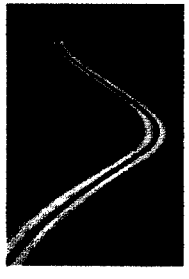
And here's what a study examining data from 10 states found:

- When motorcycle helmet legislation was repealed, the helmet use rate dropped from 99 percent to 50 percent.[30]
- When the universal law was reinstated, the helmet use rate rose to above 95 percent.[31]



Universal Motorcycle Helmet Laws to

Helmet Laws Reduce Public Payout Helmet laws significantly reduce the strain on public resources. Unhelmeted riders cost more to treat at the hospital, spend a longer time in rehabilitation, and are more likely to require some form of public assistance to for pay medical bills and rehabilitation. In 1991, prior to enacting its helmet law, California's state medical insurance program paid $40 million for the treatment of motorcycle-related head injuries. That figure dropped to $24 million after enactment of a universal helmet law.



"It costs nothing to ride without a helmet – as long as there is no crash."
It is true that wearing a motorcycle helmet will not prevent a crash. But when a crash happens, the freedom to ride unhelmeted is paid for in different ways, by different sources. The motorcyclist pays and the public pays through taxes, insurance rates, and health care costs.

What is the price? Hospitalization and related medical expenses are higher for unhelmeted riders because of brain injuries. Here's what the data tell us:

- The average charge for inpatient care for motorcyclists who sustain a brain injury is more than twice the charge for motorcyclists receiving inpatient care for other injuries. [32]
- The average savings for prevented brain injuries in Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin was $15,000 in inpatient costs for each incident in the first year. [33]
- The average hospitalization costs for unhelmeted riders were one-third greater than those of helmeted riders ($7,208 to $5,852) in a study of Illinois-injured motorcyclists. [34]

So who does pay the price? A large number of studies have focused on this issue and, although the percentages vary, one central point remains clear: whether as taxpayers or insurance customers or medical consumers, we all pay. For example,

- A privately conducted California study put the average cost of hospital admissions for a non-helmeted rider at $17,704. Of this initial amount, 72 percent of the costs for hospitalization were paid by the State of California, with another 10 percent being paid by other tax-based sources.[35]
- Another study found that 57 percent of the patients listed a government program as the principal payer of in-patient hospital costs resulting from motorcycle crashes.[36]

> **"We may not be able to eliminate all the risk from motorcycling, but helmet laws greatly reduce the most expensive injuries—head injuries. Reducing these costs is good for the consumer and it is good for business, too."**
>
> —Tim Hoyt, *Vice President,* Safety
> Nationwide Insurance Enterprises.

What about insurance? Motorcyclists pay very high insurance premiums, but these premiums don't cover the complete costs of long-term rehabilitation. Increased payouts by an insurance company eventually translate into increased insurance rates for the public, so everyone winds up paying. The most recent statistics show that private insurance pays for approximately 66 percent of the costs of inpatient care for motorcycle crash victims. Another 22 percent is paid by public funds and 12 percent is categorized as another source (usually self-payment).[37]

An unhelmeted rider is more likely to be an uninsured rider. Private insurance cannot help if the rider is not insured. A study of motorcycle crash victims at one hospital found that 46 percent were uninsured.[38] Taxpayers could be picking up a large portion of the medical costs for unhelmeted victims.

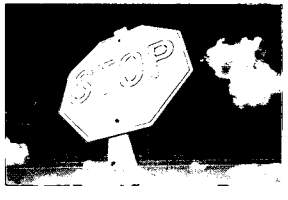
Insurance companies have the actuarial tables that tell them the high cost of protecting motorcyclists. That's why the insurance industry has taken a strong position in favor of motorcycle helmet laws. The industry recognizes that helmet laws reduce the most expensive injuries related to motorcycling -- head injuries.

Potential Savings With 100 Percent Helmet Use For States Without Motorcycle Helmet Laws:

State	Additional Lives Saved With 100 Percent Helmet Usage	Additional Cost Saved With 100 Percent Helmet Usage
Alaska	15	$21,852,156
Arizona	231	$323,990,417
Colorado	147	$206,187,959
Connecticut	155	$218,192,346
Delaware	25	$34,486,086
Hawaii	58	$80,712,198
Idaho	57	$79,858,479
Illinois	428	$600,646,597
Indiana	265	$372,797,156
Iowa	147	$206,019,386
Kansas	94	$132,302,421
Maine	57	$80,542,164
Minnesota	152	$213,942,197
Montana	52	$72,597,337
New Hampshire	51	$71,628,543
New Mexico	106	$148,949,986
North Dakota	21	$28,093,419
Ohio	513	$720,538,948
Oklahoma	132	$184,889,306
Rhode Island	33	$46,609,477
South Carolina	202	$284,009,487
South Dakota	43	$60,541,586
Utah	76	$106,174,126
Wisconsin	217	$305,334,302
Wyoming	26	$37,275,377
Totals	3,303	$4,638,173,956

"On behalf of the taxpayers I represent, I must ask: Is it worth spending these millions of dollars to pay for the wind in the hair of motorcyclists? My answer is No."

—Senator John Cullerton
Illinois State Senate



Life and Economic savings potential. Injuries resulting from motorcycle crashes have a huge economic impact. Medical costs, lost productivity, vocational rehabilitation, insurance administration, law enforcement and emergency services, legal services, and workplace distribution (retraining someone to assume duties at work) are among the factors that are impacted by these injuries. Since states with universal helmet laws have obtained nearly 100 percent helmet use rates, a significant increase in helmet use is attainable when these laws are passed. If the states above were to enact helmet laws covering all riders, these laws could prevent hundreds of injuries and deaths and could achieve a significant savings in economic costs.

A **Helmet Law** is a **Issue.**

The motorcycle helmet law issue is directly tied to larger issues. Health care, budget, and public safety issues are under consideration in state legislatures across the country.

> **"Citizens must fight for every penny at the state government level and recognize the trade-offs where they exist. In the case of motorcycle helmet laws, clearly the money spent on head injuries means that less money will be available to pay police officers or teachers."**
>
> —Judith Lee Stone, *President*
> Advocates for Highway and Auto Safety

Helmet laws make good economic sense. Every state legislature struggles with answering voters' requests for better educational systems and lower crime rates, yet state dollars are spent on citizens who incur avoidable head injuries while riding a motorcycle without a helmet.

Figures on the cost of a head injury vary, but one thing is clear: motorcycle riders injured while not wearing a helmet cost significantly more to treat than those wearing a helmet. Here are some data that point to just how expensive those costs can be:

A surviving patient with a critical head injury incurs an average of $171,000 in medical and convalescence costs in just the first year following the injury.[40]

The long-term cost of a critical head injury is estimated to be almost $300,000.[41]

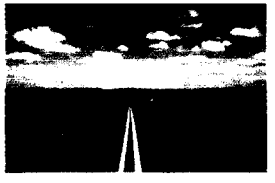
Analysis of linked data for three states with universal helmet laws in the *Crash Outcome Data Evaluation System (CODES)* showed that without the helmet law, the total *extra* inpatient charges due to brain injury would have been almost doubled from $2,325,000 to $4,095,000.[42]

The National Highway Traffic Safety Administration's *1995 Motor Vehicle Occupant Safety Survey* is consistent with the results of the 1996 Louis Harris poll. The survey found that public support for motorcycle helmet laws in the United States is strong: 82 percent of persons age 16 and older support universal helmet laws.[43]

A majority of motorcyclists support universal helmet laws. The same NHTSA survey published in 1995 revealed that 62 percent of those motorcyclists who rode in the preceding year support helmet laws for all riders.[44]

About **Motorcycle Helmets** and **Motorcycle Helmet Laws**

Fact—Research has proven this untrue. Five studies reviewed by the GAO all reported a higher incidence of severe neck injuries for unhelmeted riders.[45] An Illinois study found that helmets decrease the number of significant spinal injuries.[46]



Fact—"The helmet affects my peripheral vision" and "I can't hear as well" are two common myths neither of which is supported with scientific data. Normal peripheral vision is between 200° and 220°. Federal safety standards require that helmets provide 210° of vision. Over 90 percent of crashes happen within a range of 160° (with the majority of the remainder occurring in rear-end collisions), so it's clear that helmets do not affect peripheral vision or contribute to crashes. Hearing is not affected either. Helmets reduce the loudness of noises, but do not affect the rider's ability to distinguish between sounds. The University of Southern California conducted 900 on-scene, in-depth investigations of motorcycle crash scenes, and could not uncover a single case in which a rider could not detect a critical traffic sound.[47] Some studies indicate that helmets are useful in reducing wind noise and protecting hearing.[48]

Fact—The highest courts in more than 25 states have held motorcycle helmet laws to be constitutional. The Massachusetts motorcycle helmet law was affirmed by the U.S. Supreme Court.

> **"From the moment of the injury, society picks the person up off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation if, after recovery, he cannot replace his lost job, and, if the injury causes permanent disability, may assume the responsibility for his and his family's continued subsistence. We do not understand a state of mind that permits plaintiff to think that only he himself is concerned."**
>
> —Simon v. Governor of the Commonwealth of Massachusetts.

Fact—All highway safety laws require individuals to act in specific ways: stop at stop signs, yield to pedestrians, etc. However, courts have consistently recognized that helmet laws do not violate the right to privacy and other due process provisions. Nevertheless, the legitimacy of other traffic laws, like driving on the right side of the highway, buckling a safety belt, using a child safety seat, not driving while impaired, and obeying traffic signals is readily accepted, because all motorists recognize that failure to obey these laws results in serious risk to themselves and others. Motorcycle helmet laws are no different.

Fact—Statistics tell us that the helmet use rate in states with age-specific helmet laws is usually the same as having no law at all. Currently 22 states have a law requiring helmet use for a specific portion of the population, usually those under 18 years of age. These laws only complicate the law enforcement community's job, not make it easier. It's hard to judge a person's age when he or she is moving.

Myth

Fact—In attempts to repeal or weaken helmet laws, helmet laws opponents imply that the Federal Government penalized states without motorcycle helmet laws through a loss of highway construction funds until the repeal of Section 153 of the Intermodal Surface Transportation Efficiency Act (ISTEA) in December 1995. This is not true. From 1992 to 1995, as part of an incentive package for states to pass motorcycle helmet laws covering all riders, Section 153 provided for the transfer of Federal funds from highway construction accounts to highway safety accounts in states not having all-rider helmet laws. The National Highway System Designation Act of 1995 repealed this provision.

Myth—Statistics show that fatality rates are lower in states without helmet law

Fact—Comparisons should be across years within the same state rather than across states in the same year. This is because states differ significantly on a number of factors, such as weather, length of riding season, population density, urban versus rural roads. The real issue is what happens within a state after a helmet law is adopted or repealed.

Myth

Fact—Motorcycles are only 2 percent of the registered vehicles nationally, but motorcyclist fatalities are 5 percent of traffic fatalities each year. Motorcyclists account for over 2,100 fatalities and 56,000 injuries.[49] The fatality rate per mile traveled for motorcyclists is 16 times that of car occupants, and the injury rate is about 4 times that of car occupants.

For additional information regarding universal helmet laws, helmet effectiveness, or injury cost associated with motorcycle helmets contact the NHTSA Regional Office serving your state or:

National Highway Traffic Safety Administration
Safety Countermeasures Division, NTS-15
400 Seventh Street SW
Washington, DC 20590
Phone 202.366.1739
Fax 202.366.7721

Region I
(CT, ME, MA, NH, RI, VT)
Regional Administrator, NHTSA
Volpe National Transportation Systems Center
Kendall Square
Code 903
Cambridge, MA 02142
Phone 617.494.3427
Fax 617.494.3646

Region II
(NY, NJ, PR, VI)
Regional Administrator, NHTSA
222 Mamaroneck Avenue
Suite 204
White Plains, NY 10605
Phone 914.682.6162
Fax 914.682.6239

Region III
(DE, DC, MD, PA, VA, WV)
Regional Administrator, NHTSA
10 South Howard Street
Suite 4000
Baltimore, MD 21201
Phone 410.962.0077 x3060
Fax 410.962.2770

Region IV
(AL, FL, GA, KY, MS, NC, SC, TN)
Regional Administrator, NHTSA
Atlanta Federal Center
61 Forsyth Street SW
Suite 17730
Atlanta, GA 30303
Phone 404.562.3739
Fax 404.562.3763

Region V
(IL, IN, MI, MN, OH, WI)
Regional Administrator, NHTSA
19900 Governors Drive
Suite 201
Olympia Fields, IL 60461
Phone 708.503.8822
Fax 708.503.8991

Region VI
(AR, LA, NM, OK, TX, Indian Nations)
Regional Administrator, NHTSA
819 Taylor Street
Room 8A38
Fort Worth, TX 76102-6177
Phone 817.978.3653
Fax 817.978.8339

Region VII
(IA, KS, MO, NE)
Regional Administrator, NHTSA
6301 Rockhill Road
Room 100
Kansas City, MO 64131
Phone 816.822.7233
Fax 816.822.2069

Region VIII
(CO, MT, ND, SD, UT, WY)
Regional Administrator, NHTSA
555 Zang Street
Room 430
Lakewood, CO 80228
Phone 303.969.6917
Fax 303.969.6294

Region IX
(AZ, CA, HI, NV, American Samoa, Guam, N. Mariana Islands)
Regional Administrator, NHTSA
201 Mission Street
Suite 2230
San Francisco, CA 94105
Phone 415.744.3089
Fax 415 744-2532

Region X
(AK, ID, OR, WA)
Regional Administrator, NHTSA
3140 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174
Phone 206.220.7640
Fax 206.220.7651

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Motorcycle Helmet Laws

- **Reduce Fatalities**
- **Reduce Injuries**
- **Reduce Taxpayers' Costs**

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

NHTSA
People Saving People
http://www.nhtsa.dot.gov

DOT HS 808 601
August 1998

Helmets

NHTSA estimates that helmets saved the lives of 551 motorcyclists in 1999. If all motorcyclists had worn helmets, an additional 326 lives could have been saved.

Helmets are estimated to be 29 percent effective in preventing fatal injuries to motorcyclists.

Helmets cannot protect the rider from most types of bodily injuries. However, a recent NHTSA study showed that motorcycle helmets are 67 percent effective in preventing brain injuries. (Source: 1996 Crash Outcome Data Evaluation System (CODES): Report to Congress on Benefits of Safety Belts and Motorcycle Helmets.)

"Helmets are estimated to be 29 percent effective in preventing fatal injuries to motorcyclists."

According to NHTSA's National Occupant Protection Use Survey, a nationally representative observational survey of motorcycle helmet, safety belt, and child safety seat use, helmet use was 67 percent in 1998. According to previous NHTSA surveys, helmet use was reported to be essentially 100 percent at sites with helmet use laws governing all motorcycle riders, as compared to 34 to 54 percent at sites with no helmet use laws or laws limited to minors.

Reported helmet use rates for fatally injured motorcyclists in 1999 were 55 percent for operators and 47 percent for passengers, compared with 54 percent and 45 percent, respectively, in 1998.

All motorcycle helmets sold in the United States are required to meet Federal Motor Vehicle Safety Standard 218, the performance standard which establishes the minimum level of protection helmets must afford each user.

In 1999, 21 states, the District of Columbia, and Puerto Rico required helmet use by all motorcycle operators and passengers. In another 26 states, only persons under a specific age, usually 18, were required to wear helmets. Three states had no laws requiring helmet use.

NHTSA estimates that $13.2 billion was saved from 1984 through 1999 because of the use of motorcycle helmets. An additional $11.1 billion would have been saved if all motorcyclists had worn helmets.

For more information:

Information on motorcycle traffic fatalities is available from the National Center for Statistics and Analysis, NRD-31, 400 Seventh Street, S.W., Washington, D.C. 20590. NCSA information can also be obtained by telephone or by fax-on-demand at 1-800-934-8517. FAX messages should be sent to (202) 366-7078. General information on highway traffic safety can be accessed by Internet users at http://www.nhtsa.dot.gov/people/ncsa. To report a safety-related problem or to inquire about motor vehicle safety information, contact the Auto Safety Hotline at 1-800-424-9393.

Who Supports Universal Motorcycle Helmet Laws?

- AAA
- Advocates for Highway and Auto Safety
- Allstate Insurance Company
- American Academy of Family Physicians
- American Academy of Orthopedic Surgeons
- American Association of State Highway and Transportation Officials
- American Academy of Pediatrics
- American Coalition for Traffic Safety, Inc.
- American College of Emergency Physicians
- American College of Preventive Medicine
- American College of Surgeons
- American Driver and Traffic Safety Education Association
- American Insurance Association
- American Medical Association
- American Nurses Association
- American Public Health Association
- American Trauma Society
- Association of Women's Health, Obstetrics, and Neonatal Nurses
- Association for the Advancement of Automotive Medicine
- Brain Injury Association
- Center for Rural Emergency Medicine
- Emergency Nurses Association
- Emergency Nurses CARE
- Epilepsy Foundation of America
- GEICO
- General Federation of Women's Clubs
- Indian Health Service
- Motorcycle Industry Council
- National Association of County and City Health Officials
- National Association of Orthopaedic Nurses
- National Association of Public Hospitals
- National Association of Emergency Medical Technicians
- National Association of State EMS Directors
- National Association of State Head Injury Administrators
- National Center for Injury Prevention and Control
- National Conference of Black Mayors
- National Flight Nurses Association
- National Safety Council
- National Sheriffs Association
- Nationwide Insurance
- Native American Injury Prevention Coalition
- Prudential Insurance
- State and Territorial Injury Prevention Directors Association
- Students Against Destructive Decisions
- State Farm Insurance
- Think First Foundation
- Wellness Councils of America

Information Sources

Evaluation of Motorcycle Helmet Law Repeal in Arkansas and Texas. U.S. Department of Transportation, June 2000 (DOT HS 809 112). This report examined what happened in Arkansas and Texas when they weakened their motorcycle helmet use laws to cover only a segment of the riding population. The study reports declines in observed helmet use in both states, increases in injuries and fatalities resulting from motorcycle crashes, and increases in costs to treat traumatic brain injury cases resulting from motorcycle crashes.

Without Motorcycle Helmet Law We All Pay the Price. U.S. Department of Transportation, August 1998 (DOT HS 808 600). Consolidates motorcycle helmet effectiveness information by documenting the life- and cost-saving benefits of motorcycle helmets and the effectiveness of motorcycle helmet laws. The multimedia package discusses NHTSA's comprehensive approach to motorcycle safety and makes three points: (1) motorcycle helmets save lives and reduce head injuries to motorcyclists in crashes; (2) helmet laws for all riders increase helmet usage; and (3) helmet laws reduce the societal costs resulting from injuries and fatalities in motorcycle crashes.

The Effect of Helmet Law Repeal on Motorcycle Fatalities: A Four-Year Update. NHTSA Research Notes, September 1989. This report estimates fatalities increased about 20 percent in states that repealed helmet use laws.

The Effect of Helmets in Preventing Fatalities. U.S. Department of Transportation, March 1989 (DOT HS 807 416). This publication presents the data and analysis used to determine that motorcycle helmets are 29 percent effective in preventing fatalities.

The Effects of Motorcycle Helmets Upon Seeing and Hearing. U.S. Department of Transportation, NHTSA, February 1994 (DOT HS 808 399). This study examined the effect of wearing a helmet on the ability of motorcycle riders to: (1) visually detect the presence of vehicles in adjacent lanes before changing lanes; and (2) detect traffic sounds when operating at normal highway speeds. Results indicated that wearing a helmet does not restrict the likelihood of seeing a vehicle in an adjacent lane or the ability to hear auditory signals.

Impact of Re-enactment of the Motorcycle Helmet Law in Louisiana. U.S. Department of Transportation, December 1984 (DOT HS 806 760). This report documents the effect of Louisiana's helmet law on injuries, fatalities, and costs. The repeal and subsequent re-enactment of Louisiana's helmet use law offer unique and valuable data to conduct this systematic study.

The Crash Outcome Data Evaluation System (CODES): Technical Report. U.S. Department of Transportation, NHTSA, January 1996 (DOT HS 808 338). This document presents state-specific results from the CODES project. These results

Data on crashes in states where only minors are required to wear helmets show that fewer than 40 percent of the fatally injured minors are wearing helmets even though the law requires them to do so. Helmet laws that govern only minors are extremely difficult to enforce.

- Public support for motorcycle helmet use laws in the United States is very strong: four out of five persons ages 16 and older support such laws, according to NHTSA's 1998 Motor Vehicle Occupant Safety Survey. This support reflects little difference from the 1996 (81%) and 1994 (82%) occupant safety surveys. Support was more prevalent among females (89%) than males (71%), and among non-motorcyclists (83%) than those who rode motorcycles (47%), with this gap seeming to have widened in the past two years. Support also was higher in states requiring all riders to wear helmets (84%), compared to states having lesser requirements (75%) or no requirement (79%).
- In 1976, the Highway Safety Act was amended to remove sanctions against states without motorcycle helmet laws. Between 1976 and 1980, when compared to 1975-the year before repeals began-motorcycle fatalities increased 61 percent while motorcycle registrations increased only 15 percent.
- Caution must be employed when comparing states to each other with motorcycle crash statistics. States differ in their propensities for motorcycle fatalities. The most accurate method of evaluating the impact of traffic safety measures is to compare the states crash experience against itself.
- Reported helmet use rates for fatally injured motorcyclists in 1999 were 55 percent for operators and 47 percent for passengers, compared with 54 percent and 45 percent, respectively, in 1998.

Legislative Status

- Currently, 20 states, the District of Columbia, and Puerto Rico require helmet use for all motorcycle operators and passengers. In another 27 states, only persons under a specific age, usually 18, are required to wear helmets. Three states have no law requiring helmet use.
- Data from Louisiana, the first state to repeal and then readopt a full helmet law, showed a 30 percent reduction in fatalities (40 fewer deaths) during 1982, the first year after helmet law reenactment. The reduction occurred even though motorcycle registrations increased 6 percent during the year. The helmet use rate increased from roughly 50 percent to 96 percent.
- Since 1989, six states (Oregon, Nebraska, Texas, Washington, California, and Maryland) have enacted helmet use laws that govern all motorcycle occupants. In Oregon, there was a 33 percent reduction in motorcycle fatalities the year after its helmet law was re-enacted; Nebraska experienced a 32 percent reduction in the first year of its law; Texas experienced a 23 percent reduction; Washington experienced a 15 percent reduction; California experienced a 37 percent reduction; and Maryland experienced a 20 percent reduction.
- Since 1997, five states, Arkansas, Texas, Kentucky, Louisiana, and Florida have weakened their universal helmet laws to mandate coverage to those under the age of 21 years. These became the first states since 1983 to repeal or weaken a universal helmet law.
- Helmet use decreased following the Arkansas and Texas law changes. In the first full year following repeal, fatalities in Arkansas increased by 21 percent, compared to the last full year under the helmet use law requiring all riders to wear a helmet. In Texas, operator fatalities increased by 31 percent over these same periods. Arkansas pre-hospital EMS data showed an increase in the number of injured motorcyclists, the number of motorcyclists with head injuries, and the proportion of all injured motorcyclists with head injuries after the law change. Texas Trauma Registry data showed that the proportion of motorcyclists treated for traumatic brain injury increased and that treatment costs for traumatic brain injury cases also increased following the law change. Treatment costs for other injury cases did not change markedly.

Cost Savings

- Analysis of linked data from the Crash Outcome Data Evaluation System (CODES) in three states with universal helmet laws showed that without the helmet law, the total extra inpatient charges due to brain injury would have been almost doubled from $2,325,000 to $4,095,000.
- A number of studies have been conducted that compare hospital costs for helmeted and nonhelmeted motorcyclists involved in traffic crashes. They have found unhelmeted riders involved in crashes are less likely to have insurance and more likely to have higher hospital costs than helmeted riders involved in similar crashes.
- The CODES study, mentioned earlier, also found that brain injury cases were more than twice as costly as nonbrain injury cases for the one-year period studied. Among the unhelmeted motorcycle inpatients, charges for those suffering brain injuries were 2.75 times higher than for those without brain injuries. Long-term costs are not included.
- NHTSA estimates that motorcycle helmet use saved $762 million in 1999 alone. An additional $486 million would have been saved if all motorcyclists had worn helmets.
- NHTSA estimates that motorcycle helmet use saved $13.2 billion in economic costs from 1984 to 1999. An additional $11.1 billion would have been saved if all motorcyclists had worn helmets during the same time period.
- In Louisiana, the average cost per motorcycle crash decreased by 48 percent from 1981 to 1982, the first year of its helmet use law. Dramatic differences were found in hospital stay lengths between helmeted and nonhelmeted riders.

SOME THOUGHTS ON MOTORCYCLE HELMET LAWS

Donald W. Reinfurt, Ph.D.
UNC Highway Safety Research Center

- North Carolina has had a motorcycle helmet wearing law since 1971.
- Currently
  - 22 states and the District of Columbia require all motorcycle drivers and passengers to wear helmets. Generally, these are the larger states such as California, Florida, Massachusetts, Michigan, New York, and Pennsylvania. In these states, helmet use approaches 100 percent.
  - 25 states have restrictive helmet laws generally covering drivers and passengers under the age of 18; in these states helmet use ranges from 34 to 54 percent.
  - Three states (Colorado, Illinois and Iowa) have no law for motorcycle helmet wearing.
- Over the last 30 years, depending on federal funding requirements states have often changed their laws. Examples of the consequence of such changes include:
  - Texas: 1977 changed their law to cover riders under the age of 18; a **35 percent increase** in fatalities following the change.
  - California: 1992 changed their law to cover **all** motorcycle riders; helmet use went from 50 percent prior to the change to 99 percent and there was a **38 percent decrease** in motorcycle rider fatalities.
- 29 percent overall fatality reduction from wearing motorcycle helmets.

  67 percent reduction in brain injury.
  - In North Carolina in 1998, **80** motorcycle drivers and riders were killed. If North Carolina followed previous trends with law changes (i.e., if there had not been a motorcycle helmet law), we would have expected **97** deaths and many times the number of serious brain injuries.
- Medical Costs: Unhelmeted riders in crashes generally experience at least 10 percent more medical costs **and** are less likely to be insured.

MSF: "Helmets work. Helmet effectiveness has been confirmed by responsible studies; while helmet myths – "helmets break necks, block vision, impair hearing, cause overheating, etc." – have been disproven time and time again."

- NHTSA estimates that in the last 15 years motorcycle helmets have saved $12.1 billion.

- Argument: **Motorcycle helmets cause crashes by:**

  - **Impairing vision**: McNight and McNight (1995) followed 50 riders -- some with no helmets, some with partial helmets and some with full coverage. They found that, although peripheral vision decreased somewhat, the motorcyclists compensated when necessary by turning their head slightly as would be done with lane changes. They point out that most motorcycle crashes are caused by threats in the central area of vision such as cars turning left in front of them or by fixed objects along the road.
  - **Hearing**: The signal-to-noise ratio, which reflects important cues such as a car horn versus engine noise, road noise and wind is reduced equally with the helmet so that signals are just as distinguishable as without the helmet.

  - **Risk Compensation**: This hypothesis suggests that motor vehicle drivers with safety features such as air bags, seat belts, helmets, etc. will take extra risks since they feel safer. Thus, it would suggest that motorcycle drivers with helmets might be especially risk taking. A number of studies have collected data to examine the risk compensation theory, and **none** has been able to show any significant change in risk-taking as a result of such safety features.

* helmet min side vision of 105° to each side – most people only see 90°

For further information contact Dr. Reinfurt at donald_reinfurt@unc.edu or 919-962-8719.

Jacksonville 1992 study.
Trauma Registry
Appl & Orpon ?
TR study subjects (admitted for 24 hours)
- successes NOT in study
- DOA (especially unbelted) NOT in study
- problem linking 50% of hospital records (#) to crash data

MSF = Motorcycle Safety Foundation, Irvine, CA
"... purpose is improving the safety of motorcyclists on the highways."

5. Motorcycle Crashes

Current Status:

Table 12 – Motorcycle Crashes, Fatalities, and Injuries

Measure	3-year Average	1997	1998	1999
Crashes	2,167	1,991	2,182	2,327
Fatalities	80	61	82	97
Severe Injuries	536	541	530	538
Visible Injuries	1,096	994	1,134	1,160
Claimed Injuries	584	515	596	640

Table 13 – Motorcyclists Killed and Injured by Age

	3-year Average		1997		1998		1999	
Age	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured
0-4	0	1	0	1	0	0	0	0
5-9	0	4	0	4	0	6	0	3
10-14	0	19	0	24	0	19	0	15
15-19	7	184	8	189	6	187	6	175
20-24	16	429	11	427	17	443	20	418
25-34	27	629	20	561	31	654	30	672
35-44	15	415	10	363	14	410	21	471
45-54	11	235	7	201	11	219	15	286
55-64	3	73	4	63	1	79	4	76
65-74	1	17	1	17	0	20	1	14
75-up	0	7	0	9	0	5	0	7
Not stated	0	4	0	1	0	5	0	5
Totals	80	2,017	61	1,860	80	2,047	97	2,142

It is interesting to note the age at which motorcyclists are most likely to be injured or killed. Two age groups, 20 to 24 and 25 to 34, are consistently over-represented in the injury and fatality data for motorcyclists. This most likely a mere reflection of the categories that most often own and operate motorcycle. These age groups are most often associated with high risk behaviors, which includes motorcycle use.

In addition, the 35 to 44 and 45 to 54 year age groups are demonstrating an upward trend. Fatalities jumped ~~to 110~~ percent from 1997 to 1999, while injuries jumped 30 percent for the 35 to 44 year age group. The 45 to 54 year age group had similar jumps, with fatalities soaring 114 percent and injuries jumping 42 percent during this same time period. North Carolina is experiencing an increase in the motorcycle population and thus an increased risk of exposure.

UNC Highway Safety Research Center

University of North Carolina
Highway Safety Research Center
CB# 3430
Chapel Hill, N.C. 27599-3430

AN ANALYSIS OF INJURY OUTCOME AND INSURANCE STATUS OF HOSPITALIZED MOTORCYCLISTS

Jane C. Stutts
UNC Highway Safety Research Center

Robert Rutledge
UNC School of Medicine

Carol Martell
UNC Highway Safety Research Center

Presented at the 35th Annual Proceedings
Association for the Advancement of
Automotive Medicine, October 7-9, 1991,
Toronto Canada

HSRC-MP70

In a study utilizing data from a major trauma center in Austin, Texas, 36 percent of 206 injured motorcyclists treated over a one-and-a-half year period was observed to have no insurance; the percentage was higher for unhelmeted than for helmeted motorcyclists – 45 percent versus 23 percent, respectively. The authors of the study recommended that "policies designed to increase the accountability of motorcyclists . . . be explored" (Lloyd, undated). And in a Maryland study involving 377 hospitalized motorcyclists (from a total of 1900 motorcyclists involved in crashes statewide over a one-year period), Shanker, Dischinger, Ramzy, et al. (1990) found a 31 percent uninsurance rate, but no difference in the insurance status of helmeted and unhelmeted riders. The average hospital charge was $21,500 per injured motorcyclist.

Results show that motorcyclists .....are just as likely as other road trauma patients to be commercially or privately insured.

Source: UNC Highway Safety Research Center
Publication HSRC – MP 70

Benefits of Safety Belts and Motorcycle Helmets

U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Report to Congress
February 1996

Based on Data from
The Crash Outcome Data Evaluation System
(CODES)

NHTSA
People Saving People

Exhibit 15.
Average Inpatient Charge
by Motorcycle Helmet Use and Brain Injury Status
For Inpatient Motorcycle Riders in CODES States*

Group/ Payer Source	Motorcycle Helmet Use			
	Used		Not Used	
	Brain Injured	Not Brain Injured	Brain Injured	Not Brain Injured
All Inpatient Victims	$26,985	$12,736	$26,805	$11,730
Public	$33,764	$22,066	$46,347	$11,596
Private	$29,610	$11,834	$24,461	$12,807
Other	$16,664	$9,585	$10,238	$8,593

*Excludes Utah.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 13, 2001

The House Committee on Judiciary III met on Tuesday, March 13, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bonner, Cansler, Capps, Cole, Daughtry, Hensley, Holmes, Jarrell, Kiser, and Russell. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Russell Tucker, bill sponsor, was recognized to explain HB 78, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT GRANDPARENTS MAY ACT AS SUPERVISING DRIVERS FOR DRIVERS HOLDING LIMITED LEARNER'S PERMITS. Upon motion made by Representative Michaux, the Committee voted for a favorable report.

Representative Hensley was recognized to explain HB 493, A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR INDECENT EXPOSURE. Upon motion by Representative Daughtry, the Committee voted for a favorable report, and to re-refer the bill to the Appropriations Committee.

There being no further business, the Chair adjourned the meeting at 12:30 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 13, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 78 GRANDPARENTS AS SUPERVISING DRIVERS
Representative Russell Tucker

HB 493 INCREASE PENALTY FOR INDECENT EXPOSURE
Representative Bob Hensley

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

3-13-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	KCLH
Bill Nobles	Front Line Farmers
Wm F Purbett Jr.	Duplin FB
Ruth Sappie	NCDOT
Emily Fulghum	Smith Anderson
Ed Eldam	Parker, Poe, Eldam & Bernstein, LLP
Paula S. Stoy	Covenant w/ NC's Children

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 78

Short Title:	Grandparents as Supervising Drivers.	(Public)
Sponsors:	Representatives Tucker; Alexander, Barefoot, Clary, Coates, Cole, Davis, Fox, Goodwin, Hensley, Hill, Insko, Luebke, McLawhorn, Morris, Sexton, Sherrill, Shubert, Teague, Underhill, Walend, Warner, Warren, Warwick, and Weatherly.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 8, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT GRANDPARENTS MAY ACT AS SUPERVISING DRIVERS FOR DRIVERS HOLDING LIMITED LEARNER'S PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. – A supervising driver shall be a ~~parent~~ parent, grandparent, or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver shall be a licensed driver who has been licensed for at least five years. At least one supervising driver shall sign the application for a permit or license."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 78:
Grandparents as Supervising Drivers.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Tucker
Date:	March 13, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY:

House Bill 78 amends the Graduated Drivers License law to provide that grandparents may act as supervising drivers for drivers holding limited learner's permits.

CURRENT LAW:

In 1997, the General Assembly changed the way drivers' licenses are issued to persons under 18 years of age. The law created a system of graduated drivers' licenses with three levels based upon a driver's experience.

- Level 1 – limited learner's permit. Requires passing a driver's education course; passing DMV's written test; obtaining driver eligibility certificate, high school diploma or equivalent. Driver must be supervised by a parent, guardian, or other person approved by the parent or guardian or by the DMV. The supervising driver must have been a licensed driver for at least five years and must be the only occupant allowed in the front seat with the driver.
- Level 2 – limited provisional license. Requires possession of a level 1 license for at least 12 months with no moving violations or seat belt infractions and passage of the road test. May drive unsupervised between 5:00 am and 9:00 pm, or at any time if supervised.
- Level 3 – full provisional license. Requires possession of a level 2 license for at least 6 months with no moving violations or seat belt infractions. May drive unsupervised at any time.

BILL ANALYSIS:

This bill amends the definition of the term "Supervising Driver" to include a grandparent. The term currently includes a parent or guardian or a responsible person approved by the parent or guardian or the Division. The requirement that the supervising driver must have been licensed for at least five years is unchanged.

This bill would allow grandparents to act as supervising drivers without the formal approval of the parent or guardian and would allow a grandparent to sign the application for a permit or license.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 78 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT GRANDPARENTS MAY ACT AS SUPERVISING DRIVERS FOR DRIVERS HOLDING LIMITED LEARNER'S PERMITS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 493

Short Title:	Increase Penalty for Indecent Exposure.	(Public)
Sponsors:	Representatives Hensley, Blue; and Goodwin.	
Referred to:	Judiciary III.	

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR INDECENT EXPOSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.9(a) reads as rewritten:

"(a) Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses on or after that date.

HOUSE BILL 493:
Increase Penalty for Indecent Exposure

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Hensley
Date:	March 13, 2001	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 493 increases the criminal penalty for indecent exposure by reclassifying it from a Class 2 misdemeanor to a Class 1 misdemeanor.***

CURRENT LAW: G.S. 14-190.9 makes it a Class 2 misdemeanor for a person to willfully expose his or her "private parts" in any public place and in the presence of any other person of the opposite sex. Private parts generally are considered to mean the male and female genitalia. Although female breasts are not considered "private parts", a 1993 amendment to this statute expressly provided an exception for women breast-feeding their children. State courts have held that the buttocks are not private parts within the meaning of the indecent exposure statute.

A person who aids, abets, or procures an act of indecent exposure may also be charged with the offense, as well as a person who knowingly permits a building or land under his control to be used for indecent exposure. Nightclub operators who employ performers in nude shows may be charged with this offense.

BILL ANALYSIS: As a Class 2 misdemeanor, the offense of indecent exposure is punishable by 1-30 days community punishment, assuming the offender has no prior convictions. Community punishments may include probation, outpatient drug/alcohol treatment, community service, restitution or a fine; alternatively, the judgment may consist of a fine only. The maximum fine for a Class 2 misdemeanor is $1,000.

For a person with no prior convictions, House Bill 493 increases the sentence range so that the maximum is 45 days rather than 30 days. Since the amount of the fine for a Class 1 misdemeanor is in the discretion of the court, the bill also makes it possible for the sentencing judge to impose a fine higher than $1,000.

For a person with one to four prior convictions, this bill gives the judge the additional alternative of imposing an active sentence; current law limits the judge to community or intermediate punishment. For a person with five or more prior convictions, this bill doubles the sentence range so that the maximum is 120 days rather than 60 days.

The bill would become effective December 1, 2001 and apply to offenses committed on or after that date.

MISDEMEANOR PUNISHMENT CHART
(Effective for offenses committed on or after 12/1/95)

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

A - Active Punishment I - Intermediate Punishment C - Community Punishment

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 493 (1st Edition)

SHORT TITLE: Increase Penalty for Indecent Exposure

SPONSOR(S): Representatives Hensley, Blue, and Goodwin

FISCAL IMPACT

Yes (X) **No ()** **No Estimate Available ( )**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES					
Indigent Defense Funds	**$4,500**	**$9,900**	**$10,890**	**$11,979**	**$13,177**

County Jails (*if* sentencing under this new law follows the pattern of sentencing for existing Class 1 Misdemeanors, it could result in up to 4,145 additional inmate days in county jails per year)

POSITIONS: 0

*Indigent defense funds in the first year are at 50% because the bill is effective Dec 1, 2001. Also, costs include an anticipated 10% growth annually.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch; Local Jails

EFFECTIVE DATE: Applies to offenses committed on or after December 1, 2001

BILL SUMMARY:

Rewrites GS 14-190.9(a) to change indecent exposure from a Class 2 to a Class 1 misdemeanor. That statute makes it a crime for any person to willfully expose the private parts of his or her person in any public place and in the presence of any person of the opposite sex, or to aid or abet, or procure another to perform such act. It is also an offense to knowingly hire, lease or permit the land, building or premises over which a person has control to be used for purposes of such act.

ASSUMPTIONS AND METHODOLOGY:

Sentencing Commission

According to the Sentencing Commission, there were 259 convictions under this statute during FY 1999/2000. Notwithstanding, this reclassification is not expected to have a significant impact on the prison population. However, it is estimated to have an impact on local jail populations. While we cannot project the number of new jail inmates due to this bill, we do know that in FY 1999/2000, 15% of all Class 1 misdemeanor convictions resulted in active sentences. The average sentence length imposed was 45 days. Offenders serving active sentences of less than 90 days are housed in county jails.

The AOC database showed 614 defendants convicted under GS14-290.9(a) in calendar year 2000. *If* we assume that 15% of offenders sentenced under this new law receive active sentences averaging 45 days, this would result in 4,145 (=.15%*614*45) additional jail days for the counties to absorb. There is no recent data available on the average cost per day in county jail because it varies so widely among the counties. In the past, FRD had used the figure of $40/day, based on a 1996 survey. However, that data is too old to be used here.

If Judges sentence offenders of this crime differently than the average Class 1 misdemeanor (different % active sentences, different length sentences) or if some of the offenders face prison sentences for other offenses, the number of county jail inmate days will be affected.

Judicial Branch

Under current law, an active sentence would not be authorized for conviction of indecent exposure, a Class 2 misdemeanor, unless the defendant had at least five prior convictions (of any offense). In contrast, as a Class 1 misdemeanor under this bill, conviction could result in an active sentence if the defendant has any prior convictions. Additionally, it must be assumed that the reclassification in offense sought by this bill would be accompanied in some cases with more time and cost for the courts to dispose of the cases and longer sentences (active or suspended) authorized.

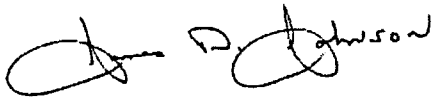
In calendar year 2000, there were 614 defendants charged with the indecent exposure offense under G.S. 14-190.9. AOC projects that it would take an average of ten additional minutes of court time per case, or 102 additional hours of court time for disposition of the 614 total charges under that statute. Given a cost of $1,022 per day, this would amount to $17,374 in district court costs. However, Fiscal Research does not include these costs in its calculation if the workload increase is less than 3600 hours (3600 hours = 2 fulltime positions).

Assuming an indigency rate for these cases of 25% or 154 cases, the cost for private assigned counsel would total $9,000 (based on $50 per hour times 180 additional hours, which consists of 26 additional in-court hours (10 minutes per case) and 1 hour of additional preparation time per case).

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson
Elisa Wolper

APPROVED BY: James D. Johnson



DATE: March 12, 2001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 493 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR INDECENT EXPOSURE.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☒ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 20, 2001

The House Committee on Judiciary III met on Tuesday, March 20, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bonner, Cansler, Capps, Cole Crawford, Daughtry, Ellis, Fox, Hensley, Holmes, Jarrell, Kiser, Russell, and Cunningham. Brenda Carter, Karen Cochrane-Brown, and Dianna Jessup, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Allen Wellons, bill sponsor, was recognized to explain SB 45 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND STRENGTHEN THE LAW PERTAINING TO PERSONS WHO INTERFERE WITH THE OPERATION OF PUBLIC SCHOOL BUSES. Representative Michaux offers a technical amendment that the committee votes to adopt. Representative Daughtry makes a motion to give a favorable report to Committee Substitute, and unfavorable report to the original bill. No vote was taken.

Vice-Chair Daniel Barefoot called to Chair meeting.

Representative Goodwin was called forward to explain HB 93 A BILL TO BE ENTITLED AN ACT TO EXPAND THE DEFINITION OF CHILD ABUSE TO INCLUDE CASES WHERE A CARETAKER OR OTHER PERSON CAUSES OR FALSELY REPORTS SYMPTOMS TO OBTAIN OTHERWISE UNNEEDED MEDICAL CARE. Representative Goodwin makes a motion to accept the Proposed Committee Substitute, and the motion passes. Michael Parker, Assistant District Attorney from 20th Prosecutorial District speaks for the bill. Tom Bennett, Executive Director of the N.C. Child Fatality Task Force speaks for bill. No vote was taken.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 20, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 93 EXPAND CHILD ABUSE DEFINITION
Representative Wayne Goodwin

SB 45 UNLAWFUL TO IMPEDE A SCHOOL BUS
Senator Allen Wellons

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charity Hayes	NCSU Student
Angel Smithers	NCSU Student
Rebecca Hornby	NCSU Student
Ashley Martin	NCSU student
Karen J. Adams	Guardian ad litem - Richmond County
Michael Parker	DA's Office
Tom V. Bennett	NCCFTE
J Pirsy	NCCAI
Ann Bellam	Bellam Assoc.
Susan Hamson	NCPSS
Jim Blackburn	NC Association of County Commissioners

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 45*
Second Edition Engrossed 2/27/01

Short Title:	Unlawful to Impede a School Bus.	(Public)
Sponsors:	Senator Wellons.	
Referred to:	Judiciary I.	

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND STRENGTHEN THE LAW PERTAINING TO PERSONS WHO INTERFERE WITH THE OPERATION OF PUBLIC SCHOOL BUSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-132.2 reads as rewritten:

"**§ 14-132.2. Willfully trespassing ~~upon or damaging~~ upon, damaging, or impeding the progress of a public school bus.**

(a) Any person who shall unlawfully and willfully demolish, destroy, deface, injure, burn or damage any public school bus or public school activity bus shall be guilty of a Class 1 misdemeanor.

(b) Any person who shall enter a public school bus or public school activity bus after being forbidden to do so by the authorized school bus driver in charge thereof, or the school principal to whom the public school bus or public school activity bus is assigned, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor.

(c) Any occupant of a public school bus or public school activity bus who shall refuse to leave said bus upon demand of the authorized driver in charge thereof, or upon demand of the principal of the school to which said bus is assigned, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor.

(c1) Any person who shall unlawfully and willfully stop, impede, delay, or detain any public school bus or public school activity bus while being operated for public school purposes shall be guilty of a Class 1 misdemeanor.

(d) Subsections (b) and (c) of this section shall not apply to a child less than 12 years of age, or authorized professional school personnel."

SECTION 2. G.S. 14-288.4(a) reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who:

(1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence; or

(2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace; or

(3) Takes possession of, exercises control over, or seizes any building or facility of any public or private educational institution without the specific authority of the chief administrative officer of the institution, or his authorized representative; or

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to:

a. An order of the chief administrative officer of the institution, or his representative, who shall include for colleges and universities the vice chancellor for student affairs or his equivalent for the institution, the dean of students or his equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the institution; or

b. An order given by any fireman or public health officer acting within the scope of his authority; or

c. If a state of emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of his authority; or

(5) Shall, after being forbidden to do so by the chief administrative officer, or his authorized representative, of any public or private educational institution:

a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or

b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or facility; or

(6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent ~~thereto.~~thereto; or

(6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity bus; or

(7) Disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 45*

Second Edition Engrossed 2/27/01

PROPOSED COMMITTEE SUBSTITUTE S45*-PCS2614-RV-2

Short Title: Unlawful to Impede a School Bus. (Public)

Sponsors:

Referred to:

February 6, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND STRENGTHEN THE LAW PERTAINING TO PERSONS WHO INTERFERE WITH THE OPERATION OF PUBLIC SCHOOL BUSES.

The General Assembly of North Carolina enacts:

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(b) Any person who shall enter a public school bus or public school activity bus after being forbidden to do so by the authorized school bus driver in charge thereof, or the school principal to whom the public school bus or public school activity bus is assigned, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor.

(c) Any occupant of a public school bus or public school activity bus who shall refuse to leave said bus upon demand of the authorized driver in charge thereof, or upon demand of the principal of the school to which said bus is assigned, shall be guilty of a ~~Class 2~~ Class 1 misdemeanor.

(c1) Any person who shall unlawfully and willfully stop, impede, delay, or detain any public school bus or public school activity bus being operated for public school purposes shall be guilty of a Class 1 misdemeanor.

(d) Subsections (b) and (c) of this section shall not apply to a child less than 12 years of age, or authorized professional school personnel."

SECTION 2. G.S. 14-288.4(a) reads as rewritten:

"(a) Disorderly conduct is a public disturbance intentionally caused by any person who:

(1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence; or

(2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace; or

(3) Takes possession of, exercises control over, or seizes any building or facility of any public or private educational institution without the specific authority of the chief administrative officer of the institution, or his authorized representative; or

(4) Refuses to vacate any building or facility of any public or private educational institution in obedience to:

a. An order of the chief administrative officer of the institution, or his representative, who shall include for colleges and universities the vice chancellor for student affairs or his equivalent for the institution, the dean of students or his equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the institution; or

b. An order given by any fireman or public health officer acting within the scope of his authority; or

c. If a state of emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of his authority; or

(5) Shall, after being forbidden to do so by the chief administrative officer, or his authorized representative, of any public or private educational institution:

a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or

b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or facility; or

(6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent ~~thereto.~~thereto; or

(6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity bus; or

(7) Disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 45:
Unlawful to Impede a School Bus.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Wellons
Date:	March 20, 2001	**Summary by:**	Brenda J. Carter, Committee Counsel
Version:	Second Edition		

SUMMARY: ***Senate Bill 45 amends the law related to conduct in connection with the operation of public school buses or school activity buses by 1) increasing the punishment for trespassing on or refusing to leave a public school bus or school activity bus, 2) creating a new misdemeanor offense for unlawfully and willfully stopping, impeding, delaying or detaining a public school bus or school activity bus, and 3) includes disturbing the peace, order or discipline on a public school bus or school activity bus in the definition of criminal disorderly conduct.***

CURRENT LAW: G.S. 14-132.4 currently makes it a Class 1 misdemeanor to unlawfully and willfully demolish, destroy, deface, or otherwise damage a public school bus or school activity bus, and punishes trespassing on or refusing to leave a public school bus or school activity bus as a Class 2 misdemeanor. There is currently no law that specifically prohibits willfully stopping, impeding, delaying or detaining a school bus. G.S. 14-288.4 currently includes trespassing and refusing to leave school buildings and facilities, or the disruption of teaching, within the definition of disorderly conduct, but does not include conduct on school buses.

BILL ANALYSIS: **Section 1** of the bill increases the punishment for the offenses of trespassing on a public school bus or school activity bus and refusing to leave a public school bus or school activity bus when demanded by an authorized person from a Class 2 misdemeanor to a Class 1 misdemeanor. Section 1 also adds a new provision that makes it a Class 1 misdemeanor to unlawfully and willfully stop, impede, delay or detain a public school bus or a school activity bus while the bus is being operated for public school purposes.

Section 2 of the bill amends the definition of disorderly conduct to include a person who intentionally causes a public disturbance by disturbing the peace, order or discipline on a public school bus or school activity bus. Disorderly conduct is punished as a Class 2 misdemeanor.

Minimum punishment for a **Class 2 misdemeanor** is 1-30 days of community service and a maximum fine of $1,000.

Minimum punishment for a **Class 1 misdemeanor** is 1-45 days of community service and a maximum fine in the discretion of the court.

EFFECTIVE DATE: The bill becomes effective December 1, 2001 and applies to offenses committed on or after that date.

Walker Reagan, Counsel for Senate Judiciary I, contributed to this summary.

MISDEMEANOR PUNISHMENT CHART
(Effective for offenses committed on or after 12/1/95)

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

A - Active Punishment I - Intermediate Punishment C - Community Punishment

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 93

Short Title:	Expand Child Abuse Definition.	(Public)
Sponsors:	Representatives Goodwin; and Insko.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DEFINITION OF CHILD ABUSE TO INCLUDE CASES WHERE A CARETAKER OR OTHER PERSON CAUSES OR FALSELY REPORTS SYMPTOMS TO OBTAIN OTHERWISE UNNEEDED MEDICAL CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene

material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; ~~or~~

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the ~~juvenile.~~ juvenile; or

g. Causes or falsely reports physical symptoms in order to obtain otherwise unneeded medical care."

SECTION 2. G.S. 14-318.2(a) reads as rewritten:

"(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who ~~inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury;~~commits one of the following acts upon or to ~~such~~ the child by other than accidental means is guilty of the Class 1 misdemeanor of child ~~abuse.~~abuse:

(1) Inflicts physical injury.

(2) Allows physical injury to be inflicted.

(3) Creates or allows to be created a substantial risk of physical injury.

(4) Causes or falsely reports physical symptoms in order to obtain otherwise unneeded medical care."

SECTION 3. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the ~~child or~~child, who intentionally commits an assault upon the child ~~which~~ that results in any serious physical injury to the ~~child~~ child, or who causes or falsely reports physical symptoms in order to obtain otherwise unneeded medical care that results in serious physical injury to the child is guilty of a Class E felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the ~~child~~

~~or~~child, who intentionally commits an assault upon the child ~~which~~ that results in any serious bodily injury to the ~~child, or which~~child or that results in permanent or protracted loss or impairment of any mental or emotional function of the child, or who causes or falsely reports physical symptoms in order to obtain otherwise unneeded medical care that results in serious bodily injury to the child is guilty of a Class C felony. "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.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

SECTION 4. This act becomes effective December 1, 2001, and applies to actions that take place after that date.

HOUSE BILL 93:
Expand Child Abuse Definition

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Goodwin
Date:	March 20, 2001	**Summary by:**	Dianna Jessup
Version:	PCS for First Edition		Committee Counsel

SUMMARY: ***The PCS for House Bill 93 would change the definition of an abused juvenile to include a juvenile whose parent, guardian, custodian, or caretaker persistently fabricates medical illness in the juvenile, either by producing or simulating the illness or both, in order to obtain otherwise unnecessary medical care and would make this activity with respect to a child under 16 years of age a Class E felony.***

The PCS differs from the First Edition in that the PCS changes the definition of child abuse from causing or falsely reporting physical symptoms in order to obtain otherwise unneeded medical care to the above definition, and the PCS makes the persistent fabrication of medical illness in order to obtain otherwise unnecessary medical care a Class E felony, instead of classifying this behavior as a misdemeanor or felony depending upon whether physical injury results.

CURRENT LAW: The Director of the Department of Social Services (DSS) in each county has been charged with establishing protective services for juveniles alleged to be abused, neglected, or dependent. When a report of abuse, neglect, or dependency is received, the Director is required to investigate. If the investigation indicates that abuse, neglect, or dependency has occurred, the Director determines whether the juvenile should be removed or what other protective services are necessary for the juvenile's protection. The statutes set forth the procedure for investigating reports, arranging for protective services, and removing a juvenile from the home. Current law also requires any person or institution that suspects that a juvenile is being abused, neglected, or is dependent must report the case of that juvenile to the Director of the local DSS.

An abused juvenile is defined to mean a juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- Commits, permits, or encourages the commission of specified sexual offenses by, with, or upon the juvenile;
- Creates or allows to be created serious emotional damage to the juvenile; or
- Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

Generally, child abuse involves the infliction of injury on a child under the age of 16, and the severity of the injury determines the level of punishment:

- Inflicting any type of injury is a Class 1 misdemeanor, punishable by a minimum of 45 days' community punishment and a maximum of 120 days active punishment.
- Inflicting any serious physical injury, encouraging any act of prostitution with or by the child, or committing or allowing the commission of any sexual act upon the child is a Class E felony, punishable by a minimum of 15 months intermediate or active punishment or a maximum of 98 months active punishment.
- Inflicting any serious bodily injury or committing an assault resulting in serious bodily injury or permanent or protracted loss or impairment of any mental or emotional function of the child is a Class C felony, punishable by a minimum of 44 months and a maximum of 261 months active punishment. "Serious bodily injury" means 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.

BILL ANALYSIS: The PCS for House Bill 93 will expand the definition of "abused juvenile" to include a juvenile whose parent, guardian, custodian, or caretaker persistently fabricates medical illness in the juvenile, either by producing or simulating the illness or both, in order to obtain otherwise unnecessary medical care. Anyone suspecting this activity will be required to notify the Director of the local DSS, and the Director will be required to investigate. In addition, a parent or other person providing care to or supervising a child younger than 16 who persistently fabricates medical illness in the child, either by producing or simulating the illness or both, in order to obtain otherwise unnecessary medical care will be guilty of a Class E felony, punishable by a minimum of 15 months intermediate or active punishment or a maximum of 98 months active punishment.

BACKGROUND: The PCS for House Bill 93 is intended to describe a type of behavior that is commonly referred to "Munchausen Syndrome by Proxy". As described in an article written by Nina J. Karlin at Dartmouth's Medical School, Karl von Munchausen was an 18th century figure who gained fame for his tall tales revolving around his adventures. The term "Munchausen Syndrome" was coined in 1951 to characterize patients who fabricate illness and subject themselves to unpleasant and potentially harmful medical procedures. The English pediatrician Meadow in 1977 came up with "Munchausen Syndrome by Proxy" (MSP) after discovering that several of his epileptic patients' mothers had fabricated the children's symptoms. In MSP, a perpetrator, usually a mother, produces symptoms or illness in her child (typically under 6 years old). MSP ranges from diseases that are completely imagined to diseases that are fully induced in a child. According to the Karlin article, there are physical and psychological impacts of this kind of behavior on a child, including physical harm induced by the mother or resulting from multiple medical tests and treatments, and psychological affects including anxiety, hyperactivity, and helplessness.

Staff discovered one other state's child abuse statute that contains similar language. Under Minnesota law, purposely giving a child a substance that subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substance is physical abuse.

Amy Currie, Research Division, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 93
PROPOSED COMMITTEE SUBSTITUTE H93-CSSW-11 [v.5]

3/20/2001 10:08:16 AM

Short Title: Expand Child Abuse Definition. (Public)

Sponsors:

Referred to:

February 12, 2001

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DEFINITION OF CHILD ABUSE TO INCLUDE CASES WHERE A CARETAKER OR OTHER PERSON PERSISTENTLY FABRICATES MEDICAL ILLNESS IN THE CHILD IN ORDER TO OBTAIN OTHERWISE UNNECESSARY MEDICAL CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as

provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; ~~or~~

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the ~~juvenile.~~ juvenile; or

g. Persistently fabricates medical illness in the juvenile, either by producing or simulating the illness or both, in order to obtain otherwise unnecessary medical care."

SECTION 2. G.S. 14-318.4 is amended by adding a new subsection to read:

"(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age who persistently fabricates medical illness in the child, either by producing or simulating the illness or both, in order to obtain otherwise unnecessary medical care is guilty of a Class E felony."

SECTION 4. This act becomes effective December 1, 2001, and applies to actions that take place after that date.

OPENING STATEMENT BY REP. WAYNE GOODWIN TO JUDICIARY III
ON HB 93 (EXPAND CHILD ABUSE DEFINITION)
March 20, 2001

Mr. Chairman and members of committee:

Two years ago I filed legislation on the subject of child abuse. In that law we raised the criminal penalty, which had previously been shamefully low, in those instances where a person had abused a child and permanent injury resulted.

We passed that proposal overwhelmingly.

The underlying principles were (1) that our children are our most precious resource, a resource that relies upon each of us for protection; and (2) that no one should have a second chance at abusing a child.

That measure two years ago was the consequence of a case that arose in my district.

This year, prosecutors in my area have brought to my attention a case involving a small loophole where a certain type of child abuse slips through without a fully applicable prohibition. In this specific instance, it involves Munchausen Syndrome by Proxy, also called MSP. MSP is an abusive disorder and form of child abuse in which the parent or caretaker relates fictitious illnesses in her child by either inducing or fabricating the signs or symptoms. As a result, the child is subjected to a pattern of extensive medical tests and hospitalization. Studies show that 9 percent of all recognized MSP cases have resulted in mortality. All of these deaths occurred in children under three years of age.

HB 93 refines the definition of child abuse so that the pattern of fabricating or producing medical illnesses for the purpose of unnecessary medical care is prohibited.

The two underlying principles for this measure match those of its predecessor from two years ago. The Child Fatality Task Force and Dr. Denise Everett, the Director of the Child Sexual Abuse Team and Chair of the Committee on Child Abuse & Neglect in the N.C. Pediatric Society have endorsed the bill. I ask for your support as well.

We must be forever vigilant in the protection of our children.

Michael Parker, Chief Senior District Attorney in the 20th Prosecutorial District, is here today to provide a summary of what has led to this proposal and to take any questions. We have additional guests as well. Mr. Chairman, if I may have Mr. Parker come forward.

###

Address to House Judiciary III

Michael D. Parker
20 March 2001

INTRODUCTION:

MEDICAL PROFESSIONALS DIAGNOSE PATIENTS BASED ON INFORMATION THEY ARE GIVEN BY THE PATIENT OR THE PATIENT'S FAMILY. THEY RELY UPON THE ACCURACY OF THIS INFORMATION TO MAKE A CORRECT DIAGNOSIS AND TO PRESCRIBE THE APPROPRIATE TREATMENT FOR THE PATIENT.

WHAT HAPPENS WHEN THE INFORMATION THEY ARE PROVIDED IS FALSE?

WOULD THAT AFFECT THE PATIENT'S TREATMENT?

WOULD IT ENDANGER THE PATIENT?

THE PROBLEM:

MBP IS A CONDITION CHARACTERIZED BY PERSISTENT FABRICATION OF MEDICAL ILLNESS FOR THE BENEFIT OF THE ABUSIVE CARETAKER. THIS CONDITION MAY MANIFEST ITSELF IN ONE OF THREE WAYS:

1. INJURY TO THE CHILD BY A CARETAKER IN ORDER TO SEEK MEDICAL ATTENTION
2. OMISSION BY A CARETAKER IN ORDER TO SEEK MEDICAL ATTENTION (E.G. NOT GIVING MED.)
3. SIMULATION OF ILLNESS WITHOUT DIRECT PHYSICAL INJURY; E.G. PRESENTING TO A DR. WITH COMPLAINTS OF A NON-EXISTENT ILLNESS IN A CHILD TO GET MEDICAL TREATMENT

CURRENT CHILD ABUSE LAWS CLEARLY COVER THE FIRST TWO SITUATIONS. THE LAW IS LESS CLEAR IN THE THIRD. HB 93 ADDRESSES THIS ISSUE.

THE HARM:

SO YOU MAY ASK, WHAT HARM DOES THIS REALLY CAUSE IF THE CHILD IS NOT PHYSICALLY INJURED ~~OR HARMED~~. AFTER ALL, A DOCTOR'S OATH REQUIRES THAT AT LEAST HE DO NO HARM. BUT IT IS NOT THE DOCTOR WHO DOES THE HARM IT IS THE CARETAKER. DR. ALEX V. LEVIN, M.D. AND MARY S. SHERIDAN (P. 26) NOTE:

> ***"... THAT THE HARM DOES NOT COME JUST FROM ABUSE OF THE CHILD TO SIMULATE ILLNESS. HARM IS A FUNCTION OF THE MOTHER'S DEEDS AND OF THE ILL THAT BEFELL THE CHILD AS A RESULT OF THOSE DEEDS. THE DEEDS OF THE MOTHER THAT HARM THE CHILD ARE THOSE THAT INVITE UNNECESSARY MEDICAL EXAMINATIONS, TESTING OR INTERVENTION. IN THIS REGARD, LYING IS NO LESS A DEED THAN ACTUALLY PRODUCING THE ILLNESS, BUT SIMPLY A WAY OF PRODUCING ILLNESS THROUGH AN EMPLOYEE WHO HAS UNWITTINGLY SEDUCED INTO THE GHASTLY CHARADE."***

SECONDLY, LEVIN AND SHERIDAN NOTE (AT P. 27-29) THAT:

"SIMULATED ILLNESS . . . MAY SOMETIMES BE VERY HARMFUL, AND IS SOMETIMES MORE HARMFUL TO THE CHILD THAN PRODUCED ILLNESS. CHILDREN WHOSE MOTHERS SIMULATE ILLNESS HAVE USUALLY BEEN SUBJECTED TO MEDICAL TESTING. SOME [HAVE A MINIMAL AMOUNT, OTHERS] HAVE UNDERGONE EXTENSIVE PROCEDURES AND INTERVENTION. THE DISCOMFORT, FEAR, OR PAIN OF THE CHILD DURING THIS PROCESS IS A FORM OF HARM. INTRUSIVE INVESTIGATIONS OR TREATMENT FOR THE CHILD MAY ALSO PRECIPITATE A CASCADE OF DAMAGE TO THE CHILD. VICTIMS MAY HAVE UNNECESSARY SURGERY [AND EXPERIENCE THE ATTENDANT COMPLICATIONS]. DOCTORS WHO ARE [DECEIVED] MAY PROPAGATE THE DECEPTION TO THE SURGEON. [AND VICTIMS] MAY DIE AS A RESULT OF [THIS] MALTREATMENT [SINCE] A CHILD MAY DIE BECAUSE OF COMPLICATIONS OF A MEDICAL TEST OR TREATMENT ORDERED TO DIAGNOSE OR TREAT THE FABRICATION."

JUST AS A PERSON IS GUILTY OF MURDER WHEN THEY HIRE SOMEONE TO COMMIT THE CRIME, THE PHYSICIAN BECOMES THE ABUSER'S PAWN WHEN THE DR. SUBJECTS THE CHILD TO MEDICAL TESTING, HOSPITAL STAYS AND MEDICINES PRESCRIBED FOR A

FABRICATED ILLNESS. THIS PERPETRATOR ENDANGERS, EXPLOITS AND ABUSES THE CHILD FOR THEIR OWN SELF-INTEREST.

COST:

BUT THE HARM DOES NOT END WITH THE CHILD; IT EXTENDS INTO OUR POCKETBOOKS, BECAUSE THE COST OF MEDICAL TREATMENT IS THE SAME, WHETHER IT IS BASED ON ACCURATE INFORMATION OR FALSE INFORMATION.

IN A RECENT CASE, MEDICAID PAID FOR 45 ER VISITS, 80 DOCTOR VISITS AND 143 PRESCRIPTIONS TOTALING $53,714 FOR A 2½ YEAR OLD CHILD WHO WAS NOT ILL.

LEGAL EXPENSES ALSO ADD UP QUICKLY. LEVIN AND SHERIDAN NOTE THAT REVIEWING ALL A VICTIMS' MEDICAL RECORDS IS AN EXTREMELY TIME CONSUMING PROCESS, WITH SOME VICTIMS HAVING MORE THAN 100 HOSPITALIZATIONS. A RECENT CASE HAS COST THE STATE MORE THAN $33,800 IN LEGAL AND EXPERT WITNESS FEES – NOT INCLUDING THE CRIMINAL PROSECUTION.

CONCLUSION:

THE HARM, EMOTIONALLY, PHYSICALLY AND FISCALLY, FROM THESE CASES IS REAL; UNFORTUNATELY, OUR CRIMINAL LAWS CURRENTLY DO NOT RECOGNIZE THIS HARM. HB 93 WILL CLOSE A LOOPHOLE IN OUR CRIMINAL LAWS AND SEND A MESSAGE TO ALL ABUSERS THAT WE TAKE THE PROTECTION OF OUR CHILDREN, BOTH

FROM PHYSICAL SCARS AND EMOTIONAL SCARRING, SERIOUSLY. I URGE YOU TO RECOMMEND THE PASSAGE OF HB 93.

Address to House Judiciary III

MBP is the fabrication of medical illness with persistence. The illness may be simulated or produced or both and may involve either acts of commission or omission. Omission may include deliberate withholding of medication from a child who is deliberately ill. MBP may present with complaints of behavioral, developmental or psychiatric abnormalities or falsified complaints of sexual or physical abuse. Children may confirm the false complaints because they believe what their mothers tell them. Mothers may profit from MBP complaints.

Spectrum of Harm

"The harm of MBP does not come just from abuse of the child to simulate illness. Harm is a function of the mother's deeds and of the ill that befell the child as a result of those deeds. The deeds of the mother that harm the child are those that invite unnecessary medical examinations, testing or intervention. In this regard, lying is no less a deed than actually producing the illness, but simply a way of producing illness through an employee who has unwittingly seduced into the ghastly charade. Naturally, the production of illness is also a deed." P. 26.

"Simulated illness, however, may sometimes be very harmful, and is sometimes more harmful to the child than produced illness. Children whose mothers simulate illness have usually been subjected to medical testing. Some [have a minimal amount, others] have undergone extensive procedures and intervention. The discomfort, fear, or pain of the child during this process is a form of harm. Intrusive investigations or treatment for the child may also precipitate a cascade of damage to the child. Victims may have unnecessary surgery [and experience the attendant complications]. Doctors who are [deceived] may propagate the deception to the surgeon. [And victims] may die as a result of the [this] maltreatment [since] a child may also die because of complications of a medical test or treatment ordered to diagnose or treat the fabrication." P. 27-29.

Reviewing all a victims records is an extremely time consuming process. Some victims have had over 100 hospitalizations. P. 35.

Levin and Sheridan note that modern medical practice could harm children seriously as a result of misdiagnosis from false information. P. 4.

The perpetrator of this type of abuse endangers, exploits and abuses the child. Jack Shepard, p. 26.

Munchausen Syndrome by Proxy, Issues in Diagnosis and Treatment, Lexington Books (1995) at 14, edited by Alex V. Levin, M.D. and Mary S. Sheridan.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 27, 2001

The House Committee on Judiciary III met on Tuesday, March 27, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Holmes, Jarrell, Kiser, Russell, and Weatherly. Brenda Carter, Karen Cochrane-Brown, and Dianna Jessup, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Allen Wellons invited to explain SB 45 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND STRENGTHEN THE LAW PERTAINING TO PERSONS WHO INTERFERE WITH THE OPERATION OF PUBLIC SCHOOL BUSES. The motion to give the Proposed Committee Substitute a favorable report, and give the original bill an unfavorable report made by Representative Daughtry is passed by the committee.

Vice-Chair Daniel Barefoot called to chair meeting.

Representative Goodwin was called forward to explain HB 93 A BILL TO BE ENTITLED AN ACT TO EXPAND THE DEFINITION OF CHILD ABUSE TO INCLUDE CASES WHERE A CARETAKER OR OTHER PERSON CAUSES OR FALSELY REPORTS SYMPTOMS TO OBTAIN OTHERWISE UNNEEDED MEDICAL CARE. Representative Ellis makes a motion to adopt the Proposed Committee Substitute. Motion passes. Representative Capps offers an amendment. Amendment passes. Representative Goodwin offers an amendment. Amendment passes. Representative Ellis makes a motion for the amendments to be rolled into a Committee Substitute, to give the Committee Substitute a favorable report, and the original bill be given an unfavorable report. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:40 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 27, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 93 EXPAND CHILD ABUSE DEFINITION
Representative Wayne Goodwin

SB 45 UNLAWFUL TO IMPEDE A SCHOOL BUS
Senator Allen Wellons

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

3/27/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allen Sanders	Burlington Kiwanis Club
Steve Hoffman	NCSBA
Thomas V. Bennett	NCCFTF
John ERICKSON	Williams High School
Donald Phillips	Williams High School
Olivia Gomez	Williams High School
Stony Klinger	Williams High School
Amber K. Murgo	Williams High School
Katy Kelly	Williams High School
Tia Oshepard	Williams High School
Tiera Trollinger	Williams High School
Jeremy Herbin	Williams High School
Crystal Mills	Williams High School
William Willcox	Williams High School
Karla Alexander	Williams High School
Matt Cerame	Williams High School
Yasmine Foust	Williams High School
Tamara Pride	Williams High School
Lauren Layne	Walter Williams High School
Amy Morris	Williams High School
Becky Parker	Williams High School
Katie greeson	Williams high school

Sponsored by Burlington Kiwanis Club

VISITOR REGISTRATION SHEET

Judiciary III

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Assoc.
Alicia Gruenebaum	YAIO
Patrice Rouen	NAACC
Lou Ann Hammond	L.A. Harris & Assoc.
Lisa Robinson	Fiscal Research
John Rustin	NCFPC
Rob Schofield	SBE
Rob Schofield	NCCU
Emily Coward	NCICU

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 93 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 19

( ) WHICH CHANGES THE TITLE

by inserting after the word persistently the phrase "and intentionally"

SIGNED Wayne Goodwin

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 93 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Capps
Sen.)

moves to amend the bill on page 2, line 18

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"(a4) A parent, guardian, custodian or caretaker of a child less"

SIGNED J. Russell Capps

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 93 A BILL TO BE ENTITLED AN ACT TO EXPAND THE DEFINITION OF CHILD ABUSE TO INCLUDE CASES WHERE A CARETAKER OR OTHER PERSON CAUSES OR FALSELY REPORTS SYMPTOMS TO OBTAIN OTHERWISE UNNEEDED MEDICAL CARE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
S.B. 46 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND STRENGTHEN THE LAW PERTAINING TO PERSONS WHO INTERFERE WITH THE OPERATION OF PUBLIC SCHOOL BUSES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill, unfavorable as to SENATE original bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

March 29, 2001

The House Committee on Judiciary III met on Thursday, March 29, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole, Daughtry, Ellis, Esposito, Fox, Hensley, Holmes, Jarrell, Kiser, and Russell. Brenda Carter, and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Barefoot is called forward to explain HB 700, A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE THE NAME ON THE NOTARY SEAL DOES NOT COMPORT EXACTLY WITH THE NAME ON THE NOTARY COMMISSION. Scott Templeton from the Secretary of State's office spoke on the bill. Representative Michaux moves to amend the bill. Motion passes. Upon motion by Representative Michaux, the Committee voted to roll the amendment into a Committee Substitute, give the committee Substitute a favorable report, and give the original bill and unfavorable report.

Representative Carolyn Russell is called on to explain HB 123, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON. Wayne County Sheriff Cary Winders speaks for the bill. Representative Russell sends forth an amendment to the bill, which is later withdrawn with no vote.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

March 27, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 123 INCREASE 2ND DEGREE ARSON PENALTY
Representative Carolyn Russell

HB 700 NOTARY-IMPROPER SEAL-CURATIVE STATUTE
Representative Daniel Barefoot

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 3-29-01

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lorrin Freeman	Sentencing Commission
John Madler	" "
Scott Templeton	Sec Stat
Carey A. Winders	Wayne County Sheriff's Office
LISA ROBINSON	Fiscal Research
EDDIE CALDWELL	Hafer Caldwell & Ferrell, P.A.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 700

Short Title:	Notary-Improper Seal-Curative Statute.	(Public)
Sponsors:	Representative Barefoot.	
Referred to:	Judiciary III.	

March 20, 2001

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE THE NAME ON THE NOTARY SEAL DOES NOT COMPORT EXACTLY WITH THE NAME ON THE NOTARY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 10A of the General Statutes is amended by adding a new section to read:

"**§ 10A-18. Validation of use of defective seal.**

Any instrument notarized in good faith by a notary public on or after January 1, 1991, where the notary seal does not bear the name of the notary exactly as it appears on the commission, as required by G.S. 10A-11, shall be sufficient and valid for all purposes, if the instrument conforms in all other respects to the requirements of law."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 700
PROPOSED COMMITTEE SUBSTITUTE H700-PCS3284-RO-1

Short Title: Notary-Improper Seal-Curative Statute. (Public)

Sponsors:

Referred to:

March 20, 2001

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE THE NAME ON THE NOTARY SEAL DOES NOT COMPORT EXACTLY WITH THE NAME ON THE NOTARY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 10A of the General Statutes is amended by adding a new section to read:

"**§ 10A-18. Validation of use of defective seal.**

Any instrument notarized in good faith by a notary public between January 1, 1991, and April 15, 2001, where the notary seal does not bear the name of the notary exactly as it appears on the commission, as required by G.S. 10A-11, shall be sufficient and valid for all purposes, if the instrument conforms in all other respects to the requirements of law."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 700:
Notary-Improper Seal-Curative Statute.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Barefoot
Date:	March 29, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY:

House Bill 700 amends the Notary Public Act to validate certain notarial acts in which the name on the notary seal does not comport exactly with the name on the notary commission.

CURRENT LAW:

Under current law, a notary is required to keep an official stamp or seal that clearly shows, among other things, the name of the notary exactly as it appears on the commission.

Under section 10A-16 of the Notary Act, several instances of error or omission relating to a notarial seal were validated on documents notarized on or before February 28, 1999.These include where the notary's name is not readable or incorrectly spelled. However, it does not cure cases in which the name on the seal does not exactly match the name on the commission.

BILL ANALYSIS:

This bill would validate instruments which were notarized in good faith on or after January 1, 1991, but where the seal does not bear the notary's name exactly as it appears on the commission, provided the instrument conforms to all other requirements of law.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 700 A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE THE NAME ON THE NOTARY SEAL DOES NOT COMPORT EXACTLY WITH THE NAME ON THE NOTARY COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 123

Short Title:	Increase 2nd Degree Arson Penalty.	(Public)
Sponsors:	Representatives Russell; and Sherrill.	
Referred to:	Judiciary III.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a Class ~~G~~ E felony."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 123:
Increase 2nd Degree Arson Penalty

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Russell
Date:	March 29, 2001	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 123 increases the penalty for second-degree arson by making it punishable as a Class E felony rather than a Class G.***

CURRENT LAW: Under G.S. 14-58, arson is the willful and malicious burning of the dwelling house of another. If someone is present inside the dwelling at the time of the burning, the offense is first-degree arson - a Class D felony. If the dwelling was unoccupied at the time of the burning, the offense is second-degree arson - a Class G felony. ***The presumptive minimum sentence for a Class G felony, assuming no prior convictions, is 10-13 months intermediate or active punishment.***

BILL ANALYSIS: House Bill 123 would increase the penalty for second-degree arson by making it punishable as a Class E felony rather than a Class G. ***The presumptive minimum sentence, for a Class E felony, assuming no prior convictions, is 20-25 months intermediate or active punishment.***

The bill essentially doubles the length of the punishment for the offense of second-degree arson. Offenders with no prior record or with few convictions may still be sentenced to either intermediate punishment or active punishment. The bill will require the imposition of an active sentence at Prior Record Level III (5-8 points), whereas the current classification does not require an active sentence until Prior Record V (15-18 points).

The bill would be effective December 1, 2001 and apply to offense committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE (INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB123

SHORT TITLE: Increase 2nd Degree Arson Penalty

SPONSOR(S): Representatives Russell and Sherrill

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

(In millions)

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
GENERAL FUND					
Correction					
Recurring	$6,364	$1,210,611	$1,436,729	$1,523,686	$1,599,089
Judicial					
Recurring					
Jury Fees & Personnel	$174	$2,088	$2,088	$2,088	$2,088
Indigent Defense	$1,055	$13,926	$15,319	$16,850	$18,536
TOTAL EXPENDITURES	$7,593	$1,226,625	$1,454,136	$1,542,624	$1,619,713

POSITIONS: It is anticipated that approximately 22 positions would be needed to supervise the additional inmates housed under this bill by the year 2005-06. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities. (These position totals include security, program, and administrative personnel). For 2001, it is recommended that a ratio of 2.5 inmates to one employee be used for each custody level.

It is anticipated that approximately 0 positions would be needed for the Judicial Department

PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2001, applies to offenses committed on or after that date.

NOTE: *This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

Amends second-degree arson laws as follows: The bill increases the penalty under GS 14-58 for 2nd degree arson (burning of an unoccupied dwelling) from Class G to Class E felony.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.* That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add 56 inmates to the prison system by the end of FY 2005-06.

	June 30 2002	**June 30 2003**	**June 30 2004**	**June 30 2005**	**June 30 2006**
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	33,141	33,954	34,738	35,682	36,590
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	32,544	32,712	32,712	32,712	32,712
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	*-597*	*-1,242*	*-2,026*	*-2970*	*-3,878*
4. No. of Projected Additional Inmates Due to this Bill[3]	3	46	53	55	56
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill[3]	3	46	53	55	56

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January, 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds is based on beds completed or funded and under construction as of 1/11/01. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. ***These bed capacity figures do not include the 3,000 new beds proposed by the Department of Correction for operation in 2003 and 04 nor the potential loss in bed capacity due to any proposals in the 2001 Session to eliminate prison beds or close prisons.***

[3] Criminal Penalty bills effective December 1, 2001 will only affect inmate population for one month -- June of FY 2001-02 – due to lag time between when an offense is committed and an offender is sentenced.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2006. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	2006-07	2007-08	2008-09	2009-10
Inmates Due to This Bill	57	57	58	60
Available Beds	-4,848	-5,771	-6,688	-7,597
New Beds Needed	57	57	58	60

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

Close Custody – 29%
Medium Custody –44%
Minimum Custody –27%

NOTE: *The Department of Correction indicates that the prison system is under capacity in close custody beds only. However, in assigning the true cost of this bill, the Fiscal Research Division considered the number of beds needed at each custody level due to this bill.*

CONSTRUCTION: Construction costs are based on estimated 2000-01 costs for each custody level as provided by the Office of State Construction. Based on these costs, the following per bed/cell construction costs are used:

Custody Level	Minimum	Medium	Close
Construction Cost Per Bed 2000-01	$35,007	$66,661	$77,500

A 5% per year inflation rate has been added to the above capital costs to determine the non-recurring costs estimated in the Fiscal Impact Table on page 1. The Office of State Construction recommended this rate based on recent and anticipated state construction projects.

NOTE: *Construction costs will be excluded if the number of beds is anticipated to be less than 100 since it is not practical to assume a prison with a capacity of fewer than 100 beds would be constructed, as in this case.*

OPERATING: Operating costs are based on actual 1999-2000 costs for each custody level as provided by the Department of Correction on November 1, 2000. A 3% per year inflationary rate has been added to these 99-2000 costs to determine the five-year recurring costs estimated in the Fiscal Impact Table on Page 1.

DAILY INMATE OPERATING COST 99-2000

Custody Level	Minimum	Medium	Close	Statewide Average
Daily Cost Per Inmate (99-2000)	$52.52	$68.13	$75.32	$63.65

These costs include security, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

NOTE: *Operating costs will be calculated as follows: number of offenders times daily cost per inmate for each custody level = total operating costs. For bills that increase inmate population in 2002 or 2003, only operating costs are included in the estimate of fiscal impact. This methodology is based on the following assumption. It is not practical to assume that Correction can build prisons quickly enough to house additional offenders before 2003-04. In practice, DOC will have to purchase additional beds out of state or in county jails or establish temporary beds until construction can be completed. Based on previous contract costs for purchasing beds, the DOC statewide average cost for 99-2000 will be the base cost of buying a prison bed.*

METHODOLOGY FOR CALCULATING PRISON BED COSTS FOR H123

Sentencing Commission projections (pg. 2) and DOC estimates of custody levels (pg. 3) were the basis for calculating the number of beds needed each year. Due to the gap between the time a felony offense is committed and the offender is sentenced, the effective date for prison impact is estimated to be 6/1/2002. Therefore, fiscal impact for FY 2002 is for the month of June only, or 1/12 of the annual bed operating cost. Fiscal Year 2003 represents the first full year.

Bed Type	2002	2003	2004	2005	2006
Close	1	12	2	1	-
Medium	1	19	3	1	1
Minimum	1	12	2	-	-
Total	3	43	7	2	1
Operating Costs					
Close	$ 2,106	$ 374,624	$ 62,815	$ 18,486	$ -
Medium	$ 2,890	$ 514,122	$ 86,205	$ 25,369	$ 29,693
Minimum	$ 1,367	$ 243,208	$ 40,780	$ -	$ -
Total	$ 6,364	$ 1,131,954	$ 189,800	$ 43,854	$ 29,693
Cumulative Total		$ 1,210,611	$ 1,436,729	$ 1,523,686	$ 1,599,089

ASSUMPTIONS AND METHODOLOGY: Judicial Branch

General

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because any expected increase in Judicial Branch workload is spread statewide while most personnel are assigned to a specific district, Fiscal Research assumes that AOC can absorb any workload increase that is less than 3600 hours (3600 hours = 2 fulltime positions). Therefore, there would be no fiscal impact due to workload in these situations. However, expenditures for jury fees and indigent defense are assumed to create a fiscal impact in every case where court time is increased since these expenditures cannot be absorbed.

HB123

As a result of the two felony class upgrade, convicted defendants would be more likely to serve longer, active sentences rather than intermediate sanctions. More importantly, the Administrative Office of the Courts (AOC) qualifies this offense as a violent habitual felony under G.S. 14-7.7(b). The conviction of two such felonies may result in prosecution as a violent habitual felon, which carries a sentence of life imprisonment without parole.

Trials and pleas would demand more court time and preparation time as a result of the harsher penalty under the proposed bill. Therefore, the assumptions and methodology of the impact on the courts are noted below.

Jury Trials

Using data on offenses charged and convicted during 2000, 113 defendants were charged with 2nd degree arson under G.S. 14-58. AOC estimates that 5% of the 113 defendants would go to trial due to the felony upgrade, for 6 felony trials, or an incremental increase of approximately 3 new felony trials. Of the new felony trials, they are estimated to last 2.5 days for a total of 7.5 additional court days. AOC estimates that each 2.5-day trial in superior court cost $612 in jury fees, for a total of **$1,836**.

As stated earlier, AOC estimates approximately 3 jury trials for 2nd degree arson offenses under current law. Additionally, they expect 3 hours of court time would be needed for a total increase of **$252** in jury fees.

Indigent Defense

An estimated 75% of these defendants would be indigent and need court-appointed counsel. AOC estimates 15 in-court hours for new trials, 3 additional in-court hours under current law, and 1 additional hour for guilty pleas. Assuming 10 additional hours of preparation for each new trial, 1 additional hour of preparation time under current law, 2 hours of preparation for each guilty plea, and 87 additional in-court hours, additional hours of assigned counsel would be provided for a total of **$12,660** in counsel fees ($60 x 211 hours). Total indigent costs would increase by 10% annually in years two through five.

NOTE: AOC estimates that costs for a full year total $43,094 including $13,926 in additional indigent defense costs and $29,168 for personnel costs and superior court jury fees. However, Fiscal Research does not include personnel costs in its calculation if the workload increase is less than 3600 hours (3600 hours = 2 fulltime positions). In this case, this bill would only increase the workload by 122 hours.

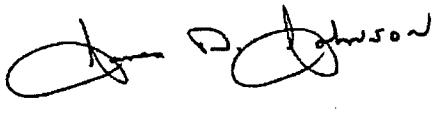
SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson

APPROVED BY: Jim Johnson



DATE: February 20, 2001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 123

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H123-ALH-3 [v.0]

Date _____,2001

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Representative Russell

moves to amend the bill on page 1, line 2,
by inserting immediately before the period the following:
"AND TO MAKE CONFORMING CHANGES TO THE STATUTORY MEDICAL REPORTING REQUIREMENTS REGARDING BURN INJURIES THAT APPEAR TO RESULT FROM A CRIMINAL ACT"; and

on page 1, lines 11-12,
by rewriting those lines to read:

"**SECTION 2.** G.S. 90-21.20 reads as rewritten:

"**§ 90-21.20. Reporting by physicians and hospitals of wounds, injuries and illnesses.**

(a) Such cases of wounds, injuries or illnesses as are enumerated in subsection (b) shall be reported as soon as it becomes practicable before, during or after completion of treatment of a person suffering such wounds, injuries, or illnesses. If such case is treated in a hospital, sanitarium or other medical institution or facility, such report shall be made by the Director, Administrator, or other person designated by the Director or Administrator, or if such case is treated elsewhere, such report shall be made by the physician or surgeon treating the case, to the chief of police or the police authorities of the city or town of this State in which the hospital or other institution, or

place of treatment is located. If such hospital or other institution or place of treatment is located outside the corporate limits of a city or town, then the report shall be made by the proper person in the manner set forth above to the sheriff of the respective county or to one of his deputies. The reporting requirement under this subsection is waived if the patient was treated earlier for the wound, injury, or illness at another hospital, sanitarium, or other medical institution or facility that is subject to the reporting requirements of this subsection.

(b) Cases of wounds, injuries or illnesses which shall be reported by physicians, and hospitals include every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by, or appearing to arise from or be caused by, the discharge of a gun or firearm, every case of illness apparently caused by poisoning, every case of a wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument if it appears to the physician or surgeon treating the case that a criminal act was involved, every case in which a patient has burns over approximately ten percent (10%) or more of the patient's body if it appears to the physician or surgeon treating the case that a criminal act was involved, and every case of a wound, injury or illness in which there is grave bodily harm or grave illness if it appears to the physician or surgeon treating the case that the wound, injury or illness resulted from a criminal act of violence.

(c) Each report made pursuant to subsections (a) and (b) above shall state the name of the wounded, ill or injured person, if known, and the age, sex, race, residence or present location, if known, and the character and extent of his injuries.

(d) Any hospital, sanitarium, or other like institution or Director, Administrator, or other designated person, or physician or surgeon participating in good faith in the making of a report pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making of such report."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 123

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H123-ALH-3 [v.0]

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 3, 2001

The House Committee on Judiciary III met on Tuesday, April 3, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole Crawford, Esposito, Fox, Hensley, Jarrell, Kiser, and Russell. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Bill Sponsor Senator Frank Ballance was called forward to explain SB 137, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW. Representative Michaux made a motion to have the Proposed Committee Substitute heard before the Committee. The motion passes. Dr. Cal Edwards, Warden of Rivers Correctional Institute, Wackenhut Corrections Corp., speaks for the bill. Representative Hensley offers an amendment. The amendment fails with a hand count of five (5) yes and seven (7) no votes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 3, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 123	INCREASE 2ND DEGREE ARSON PENALTY Representative Carolyn Russell
SB 137	PRIVATE CORRECTIONAL OFFICERS Senator Frank Ballance

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4/3/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela Harris	NCMEN
Lori Ann Harris	WCC
Colin R. Edwards	WCC
Marvin Freeman	NC Sentencing Commission
John Madden	" "
[illegible]	DOC
[illegible]	DOC
[illegible]	DOC
Aedis Watkins	SENC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 137

Judiciary II Committee Substitute Adopted 3/6/01
Third Edition Engrossed 3/7/01

Short Title: Private Correctional Officers. (Public)

Sponsors:

Referred to:

February 14, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Correctional officers and security supervisors employed at private correctional facilities pursuant to a contract between their employer and the Federal Bureau of Prisons, may in the course of their employment as correctional officers or security supervisors at those facilities use necessary force and make arrests consistent with the laws applicable to the North Carolina Department of Correction, provided that the Department of Correction determines that the employment policies of such private corporations meet the same minimum standards and practices followed by the Department of Correction in employing its correctional personnel, and if:

(1) Those correctional officers and security supervisors have been certified as correctional officers as provided under Chapter 17C of the General Statutes; or

(2) Those correctional officers and security supervisors employed by the private corporation at the facility have completed a training curriculum that the Department of Correction has determined meets or exceeds the standards required by the North Carolina Criminal Justice Education and Training Standards Commission for correctional personnel. The Department may require that it be notified of the names and positions of such persons prior to such persons' beginning duties at the correctional facility and that the Department be notified when any such person is no longer employed in such duties at the correctional facility.

SECTION 2. Any private corporation described in Section 1 of this act shall without limit defend, indemnify, and hold harmless the State, its officers, employees, and agents from any claims arising out of the operation of the private correctional facility, or the granting of the powers authorized under this act, including any attorneys' fees or other legal costs incurred by the State, its officers, employees, or agents as a result of such claims.

SECTION 3. Any private corporation described in Section 1 of this act must maintain in force liability insurance to satisfy any final judgment rendered against the private corporation or the State, its officers, employees, and agents that arises out of the operation of the correctional facility or the indemnification requirements in Section 2 of this act. The Department of Correction shall determine annually the amount of liability insurance specified in this section based upon the size and security level of the correctional facility and shall determine the requirements for ensuring that the insurance remains in force. The minimum amount of liability insurance that will be required under this section is ten million dollars ($10,000,000) per occurrence.

SECTION 4. The Department of Correction shall adopt rules to implement the provisions of this act.

SECTION 5. The authority set forth in this act to use necessary force and make arrests shall be in addition to any existing authority set forth in the statutory or common law of the State.

SECTION 6. A private corporation described in Section 1 of this act shall bear the costs of services provided by the Department of Correction for the corporation. The amount of the costs shall be determined by the Secretary of the Department.

SECTION 7. This act is effective when it becomes law, applies to private correctional facilities, and the employees of those correctional facilities, constructed and contracted to be operated by the effective date of this act, and expires two years after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 137
Judiciary II Committee Substitute Adopted 3/6/01
Third Edition Engrossed 3/7/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S137-CSRO-2 [v.1]

4/2/2001 8:46:38 PM

Short Title: Private Correctional Officers. (Public)

Sponsors:

Referred to:

February 14, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Correctional officers and security supervisors employed at private correctional facilities pursuant to a contract between their employer and the Federal Bureau of Prisons, may in the course of their employment as correctional officers or security supervisors use necessary force and make arrests consistent with the laws applicable to the North Carolina Department of Correction, which force shall not exceed that authorized to North Carolina Department of Corrections officers, provided that the Department of Correction determines that the employment policies of such private corporations meet the same minimum standards and practices followed by the Department of Correction in employing its correctional personnel, and if:

(1) Those correctional officers and security supervisors have been certified as correctional officers as provided under Chapter 17C of the General Statutes; or

(2) Those correctional officers and security supervisors employed by the private corporation at the facility have completed a training curriculum that the Department of Correction has determined meets or exceeds the standards required by the North Carolina Criminal Justice Education and Training Standards Commission for correctional personnel. The Department may require that it be notified of the names and positions of such persons prior to such persons' beginning duties at the correctional facility, and the names and positions of those persons already employed at the correctional facility on the effective date of

this act and that the Department be notified when any such person is no longer employed in such duties at the correctional facility.

SECTION 2. Any private corporation described in Section 1 of this act shall without limit defend, indemnify, and hold harmless the State, its officers, employees, and agents from any claims arising out of the operation of the private correctional facility, or the granting of the powers authorized under this act, including any attorneys' fees or other legal costs incurred by the State, its officers, employees, or agents as a result of such claims.

SECTION 3. Any private corporation described in Section 1 of this act must maintain in force liability insurance to satisfy any final judgment rendered against the private corporation or the State, its officers, employees, and agents that arises out of the operation of the correctional facility or the indemnification requirements in Section 2 of this act. The minimum amount of liability insurance that will be required under this section is ten million dollars ($10,000,000) per occurrence, and twenty-five million dollars ($25,000,000.00) aggregate per occurrence. The private corporation shall ensure that its insurance company shall provide the Department of Correction with a current Certificate of Insurance evidencing compliance with the requirements of this section within ten days of the effective date of this act and annually thereafter.

SECTION 4. The Department of Correction shall adopt rules to implement the provisions of this act.

SECTION 5. The authority set forth in this act to use necessary force and make arrests shall be in addition to any existing authority set forth in the statutory or common law of the State, but shall not exceed the authority to use necessary force and make arrests set out in Section 1 of this act.

SECTION 6. A private corporation described in Section 1 of this act shall bear the reasonable costs of services provided by the Department of Correction for the corporation. The amount of the costs shall be determined by the Secretary of the Department.

SECTION 7. This act is effective when it becomes law, applies to private correctional facilities, and the employees of those correctional facilities, constructed and contracted to be operated by the effective date of this act, and expires two years after the effective date.

SENATE BILL 137:
PRIVATE CORRECTIONAL OFFICERS

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Ballance
Date:	April 3, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 137 authorizes correctional officers and security supervisors employed by private correctional facilities which supply correctional officers in connection with contracts with the Federal Bureau of Prisons to have powers similar to correctional officers of the North Carolina Department of Corrections.***

This act is effective when it becomes law and expires two years thereafter.

CURRENT LAW: ***There is currently no North Carolina law that gives police powers to correctional officers working for private corporations operating federal prisons in North Carolina.***

BILL ANALYSIS: Senate Bill 137 provides that correctional officers and security supervisors in private facilities under contract to the Federal Bureau of Prisons may have the same power to use necessary force and make arrests as employees of the North Carolina Department of Corrections. In order for those correctional officers to have that power, the Department of Corrections must determine that the private companies employment practices meet the minimum standards followed by the Department of Correction in hiring its own personnel. In addition, the private employees must be certified as correctional officers pursuant to Chapter 17C of the General Statutes which provides for oversight by the North Carolina Criminal Justice Education and Training Standards Commission, or the private corporation must satisfy the Department of Corrections that its officers and supervisors have completed training curriculum that meets or exceeds those of the Criminal Justice Education and Training Standards Commission for correctional personnel.

The bill also provides that the private corporation shall defend, indemnify and hold harmless the State from any claims arising out of the operation of the facility. The bill further contains a requirement that liability insurance to be maintained by the private corporation under the supervision of the Department of Corrections with a minimum level of ten million dollars ($10,000,000) per occurrence. The act also requires the Department of Corrections to adopt rules to implement the provisions of the act.

Finally the bill requires the private corporation to bear the costs of services provided by the Department of Corrections to the corporation.

The act expires two years after it becomes law.

This summary was contributed to by Steve Rose.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 5, 2001

The House Committee on Judiciary III met on Thursday, April 5, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole Daughtry, Ellis, Esposito, Fox, Holmes, Jarrell, Kiser, Russell, and Weatherly. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Bill Sponsor Senator Frank Ballance was called forward to continue the discussion on SB 137, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW. No vote was taken.

Representative Wayne Sexton, Bill Sponsor, was called forward to explain HB 622, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE GENERAL ASSEMBLY DECLARE THAT THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS NOT AN UNREASONABLY DANGEROUS ACTIVITY AND DOES NOT CONSTITUTE A NUISANCE PER SE; TO PROVIDE THAT THE AUTHORITY TO BRING SUIT AGAINST ANY FIREARM OR AMMUNITION MARKETER, MANUFACTURER, DISTRIBUTOR, DEALER, SELLER, OR TRADE ASSOCIATION BY OR ON BEHALF OF ANY GOVERNMENTAL UNIT FOR REMEDIES RESULTING FROM OR RELATED TO THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS RESERVED EXCLUSIVELY TO THE STATE; AND TO PROVIDE THAT ANY SUCH ACTION SHALL BE BROUGHT BY THE ATTORNEY GENERAL ON BEHALF OF THE STATE. Representative Michaux proposes amendment to the bill. The motion fails. Bruce Thompson, Parker, Poe, Adams & Bernstein, speaks against bill. Tom Bennett, Executive Director of N.C. Child Fatality Task Force, speaks against bill. Andy Romanet, N.C. League of Municipalities, speaks against bill. Ed Regan, Association of County Commissioners, speaks against bill. Representative Ellis makes a motion to give the bill a favorable report. The Committee passes the motion.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 5, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 137 PRIVATE CORRECTIONAL OFFICERS
Senator Frank Ballance

HB 622 FIREARM REGULATION AMENDMENTS
Representative Wayne Sexton

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4/5/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Lassiter	
Gary Robertson	AP
Thomas V. Bennett	NCCFTF
W.R. Daniel	GHC/BBC V.P.
James Metts	GRNC Legislative Dir.
Raymond Boiano	GRNC Legislative Team Member
HUGH ADAMS	GRNC EXEC. V.P.
Paul Valone	GRNC President
Ed Regen	N.C.A.C.C.
Lori Ann Harris	NCC
Carvin Edwards	NCC
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN, LLP
Joe McCipes	NRA-ILA & N.C. Gun Dealer
Henri McCain	NRA-ILA & N.C. Gun Dealer
NICOLE PALYA	NRA-ILA
[illegible]	Capital Group
Ardis Jatkins	SEANC
Sherry Melton	SEANC
[illegible]	DOC
Lisa Rudat	CJLC
Jeff Ray	Grass Roots North Carolina
T.J. KATTERMANN	GRASS ROOTS NORTH CAROLINA
[illegible]	NRA

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 137 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hensley
Sen.)

1 moves to amend the bill on page 1, line 8
2 ( ) WHICH CHANGES THE TITLE
3 by inserting after the word "may" the following:
4 "within the boundaries of the facilities and"
5
6
7
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16
17
18
19

SIGNED R. J. Hensley

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 622

Short Title:	Firearm Regulation Amendments.	(Public)
Sponsors:	Representatives Sexton, Warwick, Mitchell, Warner; Allen, Allred, Arnold, Barbee, Barefoot, Barnhart, Bell, Blust, Bonner, Bowie, Brubaker, Buchanan, Cansler, Capps, Carpenter, Clary, Cole, Cox, Crawford, Creech, Culp, Davis, Decker, Dedmon, Dockham, Earle, Eddins, Edwards, Ellis, Esposito, Fox, Gibson, Gillespie, Goodwin, Grady, Gray, Gulley, Haire, Harrington, Hill, Hilton, Howard, Hurley, Jarrell, Johnson, Justus, Kiser, Lucas, McComas, McCombs, McMahan, Miner, Morris, Nesbitt, Nye, Owens, Pope, Preston, Rayfield, Redwine, Russell, Setzer, Sherrill, Shubert, Smith, Starnes, Sutton, Teague, Thompson, Tolson, Tucker, Wainwright, Walend, Walker, Weatherly, West, C. Wilson, G. Wilson, Womble, Wright, and Yongue.	
Referred to:	Judiciary III.	

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GENERAL ASSEMBLY DECLARE THAT THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS NOT AN UNREASONABLY DANGEROUS ACTIVITY AND DOES NOT CONSTITUTE A NUISANCE PER SE; TO PROVIDE THAT THE AUTHORITY TO BRING SUIT AGAINST ANY FIREARM OR AMMUNITION MARKETER, MANUFACTURER, DISTRIBUTOR, DEALER, SELLER, OR TRADE ASSOCIATION BY OR ON BEHALF OF ANY GOVERNMENTAL UNIT FOR REMEDIES RESULTING FROM OR RELATED TO THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS RESERVED EXCLUSIVELY TO THE STATE; AND TO PROVIDE THAT ANY SUCH ACTION SHALL BE BROUGHT BY THE ATTORNEY GENERAL ON BEHALF OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section. The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to

the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 2. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 3. This act is effective when it becomes law and applies to any action pending or filed on or after that date.

HOUSE BILL 622:
Firearm Regulation Amendments

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Sexton
Date:	April 5, 2001	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 622 declares that the lawful manufacture and sale of firearms is not a nuisance in and of itself. The bill further declares that it is the unlawful use of firearms, rather than the lawful manufacture and sale of firearms, which results in injuries arising from unlawful use. The bill provides that the authority to bring suit and the right to recover against a firearms manufacture or seller for damages resulting from the lawful manufacture or sale of firearms or ammunition is reserved exclusively to the State, and may be exercised by the Attorney General on behalf of the State.***

CURRENT LAW: G.S. 14-409.40 generally preempts local governments from regulating firearms. Except as permitted by statute, no county or municipality may regulate the possession, sale, or transfer of firearms or ammunition.

BILL ANALYSIS: The bill amends G.S. 14-409.40 to declare that the lawful design, manufacture, and sale of firearms or ammunition to the public is not an unreasonable dangerous activity and does not in itself constitute a nuisance. The bill makes the preemption against local regulation of firearms applicable only to causes of action for damages resulting from the lawful design, marketing, manufacture, distribution and sale or transfer of firearms; it provides that the authority to bring suit and the right to recover against a firearms manufacture or seller for damages resulting from these activities is reserved exclusively to the State, and may be exercised by the Attorney General on behalf of the State. The bill specifically provides that the preemption does not prevent a local government from bringing an action against a firearms dealer or manufacturer for breach of contract or warranty with regard to firearms or ammunition purchased by the local government.

The bill contains a severability clause that provides that if any part of the act is held invalid the invalidity will not affect other provisions.

The bill would be effective when it becomes law, and apply to any action pending or filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 137 **<3rd Edition> (Proposed House Committee Substitute (CSRO-2)**

SHORT TITLE: Private Correctional Officers

SPONSOR(S): Senator Ballance

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES	$24,271	$18,198			
EXPENDITURES	$24,271	$18,198	0	0	0
NET IMPACT	**-0-**	**-0-**			
POSITIONS:	.5	.5	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction

EFFECTIVE DATE: When it becomes law

BILL SUMMARY: Senate Bill 137 authorizes correctional officers in a private correctional facility run under contract with the Federal Bureau of Prisons to use necessary force and have the powers of arrest, to the extent allowed by law for the Department of Correction, under certain conditions; (1) the bill is limited to facilities constructed and contracted to be operated by the effective date of this act; (2) the correctional officers/security supervisors are either certified correctional officers under Chapter 17C (NC Criminal Justice Training and Standards Commission) or have completed a training course that Dept of Correction determines meets Criminal Justice Training and Standards Commission standards for correctional personnel; (3) the private corporation must maintain liability insurance (minimum $10 Million per occurrence) and shall indemnify and hold harmless the state. The bill sunsets 2 years after the effective date.

The 3rd edition adds Section 6 which specifies that a private corporation described in the act shall bear the Dept of Correction's costs, to be determined by the Secretary. The proposed PHCS continues the requirement for minimum liability insurance of $10 million per occurrence, but adds the figure of $25 million aggregate per occurrence. The PCS also states that the private correctional officers at the federal facility may not use force that exceeds the authority provided to DOC employees for the use of force.

ASSUMPTIONS AND METHODOLOGY:
Senate Bill 137 requires the Department of Correction (DOC) to do four things in regards to the private correctional facility; (1) determine that the employment policies meet the minimum standards they use in employing their own staff; (2) determine that the training curriculum meets or exceeds standards used by Criminal Justice Training and Standards Commission for correctional personnel; (3) determine the amount of liability insurance necessary for the facility; (4) adopt rules to implement the act. In addition, DOC *may* require notification by the company of names, positions, and changes in employment.

The practical impact of this bill would require DOC to review the employment policies and training curriculum of the Wackenhutt Corporation in its contract with the Federal Bureau of Prisons in Hertford County. The bill is ambiguous as to whether Department of Correction would merely review the general process and system established by the contract and Wackenhutt or whether they would review and maintain some paperwork on each of the correctional officers and supervisors. Because DOC has the option to review individual names and positions and because the bill asks DOC to adopt rules, the Fiscal Research Division is assuming they will choose the case-by-case review. This activity is comparable to what the Criminal Justice Training & Standards Division does to certify Department of Correction officers; DOC oversees the certification and training process but CJTS reviews and audits the applications and maintains files.

The Department of Correction estimated that they would need one fulltime Personnel Technician (Gr 63) to oversee this function. FRD agrees that DOC would need an additional position, primarily because this is a new function for them. However, because the number of private prison personnel involved is fairly small (around 350 at the beginning plus 50-100 per year depending on turnover) we do not think a fulltime position is justified. (1 personnel tech handles the DOC personnel at Criminal Justice Training & Standards. That involves an estimated 3,500 hires per year) since it is not practical to hire below the half-time level, this estimate is based on a half time position. The other functions required by this bill (e.g. rulemaking, determining level of liability insurance) would be handled by higher-level management but can be absorbed by the Department of Correction within existing resources. Since the bill sunsets after two years, the note reflects costs in 2001-2 and 2002-3 only and a time limited position would be appropriate. The first year costs includes $ 7,145 in one-time equipment costs for the new position with the assumption this equipment can be used for future DOC employees if the law is sunset and the position not renewed.

Section 6 specifies that the corporation to whom this bill applies will bear these costs as determined by the Secretary of the Department of Correction. These offsetting revenues are reflected in the box on page 1 and result in no fiscal impact to the State.

PHCS changes do not affect the fiscal impact.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Elisa Wolper

APPROVED BY: James D. Johnson

DATE: April 4, 2001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 622 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Michaux
Sen.)

moves to amend the bill on page 3, line 12 - 13

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

" Section 3. This act is effective when it becomes law and applies to any action filed on or after that date."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 622 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE GENERAL ASSEMBLY DECLARE THAT THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS NOT AN UNREASONABLY DANGEROUS ACTIVITY AND DOES NOT CONSTITUTE A NUISANCE PER SE; TO PROVIDE THAT THE AUTHORITY TO BRING SUIT AGAINST ANY FIREARM OR AMMUNITION MARKETER, MANUFACTURER, DISTRIBUTOR, DEALER, SELLER, OR TRADE ASSOCIATION BY OR ON BEHALF OF ANY GOVERNMENTAL UNIT FOR REMEDIES RESULTING FROM OR RELATED TO THE LAWFUL DESIGN, MARKETING, MANUFACTURE, DISTRIBUTION, SALE, OR TRANSFER OF FIREARMS OR AMMUNITION TO THE PUBLIC IS RESERVED EXCLUSIVELY TO THE STATE; AND TO PROVIDE THAT ANY SUCH ACTION SHALL BE BROUGHT BY THE ATTORNEY GENERAL ON BEHALF OF THE STATE.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 10, 2001

The House Committee on Judiciary III met on Tuesday, April 10, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, J. Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Holmes, Jarrell, Kiser, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman for the day, Vice-Chair Michaux, called the meeting to order to consider the following bills:

Representative Hensley was recognized to explain HB 899, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW WITH REGARD TO RESISTING, OBSTRUCTING, OR DELAYING A PUBLIC OFFICER IN DISCHARGING OFFICIAL DUTIES. Representative Hensley makes a motion for an amendment and the motion passes. Representative Hensley makes a motion to roll the amendment into a committee Substitute, give the committee Substitute a favorable report and give an unfavorable report to the original bill. The motion passes.

Representative Hensley was recognized to discuss HB 494, A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR UNLAWFULLY CARRYING A CONCEALED WEAPON. Margaret Ann Tyner, Thomas Beattie, and Jeff Rau representing GrassRootsNC are recognized to speak against the bill. No vote was taken.

Senator Frank Ballance is recognized to explain SB 137, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW. A motion is made for a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. The motion passes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 10, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 137	PRIVATE CORRECTIONAL OFFICERS Senator Frank Ballance
HB 16	MOVE LEFT PASSING PULLED-OVER VEHICLE Representative Ronnie Smith
HB 325	LEVEL 2 GRADUATED DRIVERS LICENSE CHANGES Representative Arlie Culp
HB 494	INCREASE PENALTY/CARRYING CONCEALED WEAPON Representative Bob Hensley
HB 899	AMEND OBSTRUCT OR DELAY PUBLIC OFFICER Representative Bob Hensley
HB 904	INCREASE MISDEMEANOR CHILD ABUSE PENALTY Representative Wayne Goodwin
HB 905	LARCENY/LAW ENFORCEMENT EQUIPMENT Representative Wayne Goodwin
HB 955	NOTARY VALIDATION Representative Gene Arnold

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4-10-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Ann Tyson	Citizens/URNC
John Phelps	NC League of Municipalities
Sherry Melton	SEANC
Ardis Watkins	SEANC
Richard Daniels	DOC
David Gove	Raleigh CBA
Joy Barbour	Concerned Bikers' Assoc./ABATE of N.C.
[illegible]	Capitol Group
Margaret Westbrook	Kennedy Covington
Jeff Rau	Grass Roots North Carolina
Bill Early	Hertford County Economic Development
Calvin Edwards	UCC
Matt Willoughby	NC/NN
Harriett Smallwood	Students Against Destructive Decisions
Lito Rubio	CYPC
H. Hunter	GA.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 899

Short Title:	Amend Obstruct or Delay Public Officer.	(Public)
Sponsors:	Representatives Hensley and Blue (Primary Sponsors).	
Referred to:	Judiciary III.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW WITH REGARD TO RESISTING, OBSTRUCTING, OR DELAYING A PUBLIC OFFICER IN DISCHARGING OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-223 reads as rewritten:

"**§ 14-223. Resisting ~~officers.~~officers; delay or obstruct officer in discharge of official duty.**

(a) If any person shall willfully and unlawfully ~~resist, delay or obstruct~~ physically resist a public officer in discharging or attempting to discharge a duty of his or her office, ~~he~~ the person shall be guilty of a Class 2 misdemeanor.

(b) If any person shall willfully and unlawfully delay or obstruct a public officer in discharging or attempting to discharge a duty of his or her office, the person shall be guilty of a Class 3 misdemeanor."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 899:
Amend Obstruct or Delay Public Officer.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Hensley
Date:	April 10, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 899 amends the law with regard to resisting, obstructing, or delaying a public officer in discharging the officer's official duties.

CURRENT LAW:

Under current law, a person who willfully and unlawfully resists, delays or obstructs a public officer who is discharging or attempting to discharge the officer's duty is guilty of a Class 2 misdemeanor.

A Class 2 misdemeanor is punishable by a sentence of 1 to 30 days community punishment if there are no prior convictions.

BILL ANALYSIS:

This bill amends the law to create two separate offenses instead of one. The first offense is "physically resisting" a public officer. This offense remains a Class 2 misdemeanor.

The second offense is delaying or obstructing a public officer. A person who commits this offense is guilty of a Class 3 misdemeanor, which is punishable by a sentence of 1 to 10 days community punishment if there are no prior convictions.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 899 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW WITH REGARD TO RESISTING, OBSTRUCTING, OR DELAYING A PUBLIC OFFICER IN DISCHARGING OFFICIAL DUTIES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S.B. 137 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN PRIVATE CORRECTIONAL OFFICERS TO USE FORCE AND MAKE ARRESTS CONSISTENT WITH NORTH CAROLINA LAW.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 12, 2001

The House Committee on Judiciary III met on Thursday, April 12, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Ellis, Esposito, Fox, Hensley, Holmes, Jarrell, Kiser, and Russell. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Russell is recognized to explain HB 123, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON. Representative Esposito makes a motion to have the PCS before the Committee. The motion passes. Representative makes a motion for a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. The motion passes.

Representative Goodwin explains HB 904, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR MISDEMEANOR CHILD ABUSE TO A CLASS A1 MISDEMEANOR SO THAT IT IS THE SAME AS THE PENALTY FOR ASSAULT ON AN ADULT. Anne Winner from the NC Bar Association speaks for the bill. No vote is taken.

There being no further business, the Chair adjourned the meeting at 12:45 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 12, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 123 — INCREASE 2ND DEGREE ARSON PENALTY
Representative Carolyn Russell

HB 335 — DISPOSITION OF FIREARMS/BENEFIT LAW ENFORCEMENT
Representative Carolyn Russell

HB 904 — INCREASE MISDEMEANOR CHILD ABUSE PENALTY
Representative Wayne Goodwin

HB 905 — LARCENY/LAW ENFORCEMENT EQUIPMENT
Representative Wayne Goodwin

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 4-12-01

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Fulghum	Smith Anderson
Andy Romanelli	NCLM
Alicia Gruenebaum	YAIO
John Madler	NC Sentencing Commission
Lorrin Freeman	NC Sentencing Commission
Michelle Frazier	NC Bar Assoc.
John Rust	NCFPC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 123

Short Title:	Increase 2nd Degree Arson Penalty.	(Public)
Sponsors:	Representatives Russell; and Sherrill.	
Referred to:	Judiciary III.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-58 reads as rewritten:

"**§ 14-58. Punishment for arson.**

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a Class ~~G~~ E felony."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

PROPOSED COMMITTEE SUBSTITUTE HOUSE BILL 123: Increase 2nd Degree Arson Penalty

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Russell
Date:	April 12, 2001	**Summary by:**	Brenda J. Carter
Version:	H123-CSRV-4		Committee Counsel

SUMMARY: This proposed committee substitute for House Bill 123 authorizes the Legislative Research Commission to study whether the penalty for second-degree arson should be increased by making it punishable as a Class E felony rather than a Class G.

CURRENT LAW: Under G.S. 14-58, arson is the willful and malicious burning of the dwelling house of another. If someone is present inside the dwelling at the time of the burning, the offense is first-degree arson - a Class D felony. If the dwelling was unoccupied at the time of the burning, the offense is second-degree arson - a Class G felony. ***The presumptive minimum sentence for a Class G felony, assuming no prior convictions, is 10-13 months intermediate or active punishment.***

BILL ANALYSIS: House Bill 123 as introduced would have increased the penalty for second-degree arson by making it punishable as a Class E felony rather than a Class G. ***The presumptive minimum sentence, for a Class E felony, assuming no prior convictions, is 20-25 months intermediate or active punishment.***

The bill essentially doubled the length of the punishment for the offense of second-degree arson. Offenders with no prior record or with few convictions would still be sentenced to either intermediate punishment or active punishment. The bill would have required the imposition of an active sentence at Prior Record Level III (5-8 points), whereas the current classification does not require an active sentence until Prior Record V (15-18 points).

The fiscal note for the original bill indicated significant fiscal impact over the next five years, based on anticipated costs to the Division of Prisons.

This proposed committee substitute authorizes the Legislative Research Commission to study all the arson and burning statutes and to make a report to the 2002 Session. It authorizes the LRC to study the reporting requirements of physicians and hospitals with regard to burn injuries.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 123
PROPOSED COMMITTEE SUBSTITUTE H123-CSRV-4 [v.1]

4/12/2001 11:07:38 AM

Short Title: Increase 2nd Degree Arson Penalty. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE STATE'S CRIMINAL LAWS WITH REGARD TO ARSON AND OTHER BURNINGS; AND TO STUDY THE NEED FOR CONFORMING CHANGES TO THE STATUTORY MEDICAL REPORTING REQUIREMENTS REGARDING BURN INJURIES THAT APPEAR TO RESULT FROM A CRIMINAL ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The Legislative Research Commission may study the question of whether the punishment for second-degree arson should be punishable as a Class E felony rather than a Class G felony. The Commission may include as a part of its study consolidation or reclassification of any or all of the arson and burning offenses in Article 15 of Chapter 14 of the General Statutes.

SECTION 2. The Commission may also study the question of whether G.S. 90-21.20 should be amended to require reporting by physicians and hospitals of every case in which a patient has burns over approximately ten percent (10%) or more of the patient's body if it appears to the physician or surgeon treating the case that a criminal act was involved. The Commission may include as a part of its study other issues regarding reporting by physicians and hospitals of wounds, injuries and illnesses.

SECTION 3. The Commission shall make a report of its findings and recommendations, including any recommended legislation, to the 2002 Regular Session of the 2001 General Assembly.

SECTION 4. This act is effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 123 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE ARSON.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HOUSE BILL 904:
Increase Misdemeanor Child Abuse Penalty

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Goodwin
Date:	April 10, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 904 would increase the penalty for a parent who inflicts physical injury, allows injury to be inflicted, or creates or allows to be created a substantial risk of physical injury on a child from a Class 1 misdemeanor, punishable by up to 120 days' punishment, to a Class A1 misdemeanor, punishable by up to 150 days' punishment. The act would become effective December 1, 2001, and apply to offenses committed on or after that date.***

CURRENT LAW: A person guilty of misdemeanor child abuse is a parent of a child less than 16 years old or is a person providing care or supervision of a child less than 16 years old, *and* the person inflicts physical injury on, or allows physical injury to be inflicted on, or creates or allows to be created a substantial risk of physical injury to that child other than by accident. The injury need not be a serious injury. In fact, injury need not actually occur; it is enough if the defendant leaves the child in circumstances in which abuse is likely to occur. Currently this offense is a Class 1 misdemeanor, punishable by up to 120 days' community/intermediate/active punishment.

Currently, assault on a child under age 12 is a Class A1 misdemeanor. Assault is defined in case law as an overt act or attempt, or the unequivocal appearance of attempt, with force and violence, to immediately physically injury another person, with the show of force or menace of violence. The key component is a show of force sufficient to place another in reasonable fear of immediate physical harm. An assault may be the actual unlawful physical touching of another person (battery), or it may be an attempt to unlawfully touch another. Under case law, a parent can be convicted of aiding and abetting an assault on his or her child if the parent was present when the child was assaulted and did not take reasonable steps to prevent the assault.

BILL ANALYSIS: House Bill 904 would increase the penalty for misdemeanor child abuse to a Class A1 misdemeanor, punishable for up to 150 days' community/intermediate/active punishment. This would result in elevating the punishment for misdemeanor child abuse to the same level as the punishment for assault on a child under 12.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 16, 2001

The House Committee on Judiciary III met on Monday, April 16, 2001, in Room 421 of the Legislative Office Building at 5:00 PM. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Representatives Bell, Capps, Cole, M. Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Jarrell, Kiser, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Gene Arnold is recognized to explain HB 955, A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS. Representative Kiser moves for a favorable report. Motion passes.

Representative Mia Morris is recognized to explain HB 774, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR HOW DRIVERS SHALL OPERATE THEIR MOTOR VEHICLES WHEN PASSING PARKED OR STANDING EMERGENCY VEHICLES THAT HAVE THEIR EMERGENCY LIGHTS ILLUMINATED. Representative Cole makes a motion to send the bill to a subcommittee. The motion passes.

Representative Ronnie Smith is recognized to explain HB 1067, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTOMOBILE BILL OF RIGHTS. Representative Cole enters an amendment. Representative Daughtry moves to adopt the amendment. The motion passes. Representative Daughtry makes a motion to roll the amendment into a Committee Substitute, give a favorable report to the Committee Substitute and an unfavorable report to the original. The motion passes.

Representative Goodwin explains HB 905, A BILL TO BE ENTITLED AN ACT TO INCLUDE LAW ENFORCEMENT EQUIPMENT IN THE CATEGORY OF FELONY LARCENY. Jeff Gray, representing the Fraternal Order of Police speaks for the bill. No vote is taken.

There being no further business, the Chair adjourned the meeting at 6:15 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 16, 2001
Room 421 LOB
5:00 PM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 694	CLARIFY MV DEALER FRANCHISE LAWS Representative Bill Owens
HB 774	PASSING PARKED EMERGENCY VEHICLES Representative Mia Morris
HB 904	INCREASE MISDEMEANOR CHILD ABUSE PENALTY Representative Wayne Goodwin
HB 905	LARCENY/LAW ENFORCEMENT EQUIPMENT Representative Wayne Goodwin
HB 955	NOTARY VALIDATION Representative Gene Arnold
HB 1067	CLARIFY AUTO REPAIR BILL OF RIGHTS Representative Ronnie Smith

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4-16-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Benson	the Capital Group
Jeff Gray	FOP
David Ferrell	Hofer, Caldwell & Farrell PA.
Bob Glaser	NC Auto Dealers
Paula A. Wolf.	Covenant w/NC's Children
Alicia Mueneburm	YAIO
K L McBride	YCAA
Dean Plunkett	NC BEER & WINE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 955

Short Title:	Notary Validation.	(Public)
Sponsors:	Representative Arnold.	
Referred to:	Judiciary III.	

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed on or before ~~February 28, 1999.~~ April 1, 2001."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 955:
Notary Validation.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Arnold
Date:	April 10, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 955 amends the law to validate certain acts and documents that were not notarized in strict compliance with the statute.***

CURRENT LAW:

G.S. 10A-16 validates acts of notaries public in certain instances including acknowledgements taken prior to a person's qualification as a notary but after the person has been commissioned or recommissioned, or by a person whose commission has expired. Also validated are documents bearing an erroneously stated date of expiration on the notarial seal, documents in which the notary's name is illegible or incorrectly spelled, and documents in which the seal fails to contain the words "North Carolina" or an abbreviation thereof. Finally, this section also validates deeds of trust in which the notary was named in the document as a trustee only.

This section currently applies to notarial acts performed on or before February 28, 1999.

BILL ANALYSIS:

This bill amends the law to validate acts performed on or before April 1, 2001.

BACKGROUND:

Chapter 10A of the General Statutes was recodified in 1991. At that time this provision was made applicable to acts performed before October 1, 1991. Prior to 1991, the equivalent of this provision had been updated approximately every two years. It was updated in 1997, and made applicable to acts performed before December 1, 1996, and again in 1998, and 1999.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 955 A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 774
Corrected Copy 3/28/01
PROPOSED COMMITTEE SUBSTITUTE H774-CSRV-7 [v.3]

4/19/2001 10:07:53 AM

Short Title: Passing Parked Emergency Vehicle. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR HOW DRIVERS SHALL OPERATE THEIR MOTOR VEHICLES WHEN PASSING PARKED OR STANDING EMERGENCY VEHICLES THAT HAVE THEIR EMERGENCY LIGHTS ILLUMINATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157 is amended by adding a new subsection to read:

"(f) When an authorized emergency vehicle that is giving a warning signal by appropriate light as described in subsection (a) of this section is parked or standing within 12 feet of a roadway, the driver of every other vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed until completely past the authorized emergency vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic."

SECTION 2. This act becomes effective October 1, 2001.

HOUSE BILL 774:
Passing Parked Emergency Vehicle

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Morris
Date:	April 16, 2001	**Summary by:**	Brenda J. Carter
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 774 prescribes how drivers are to operate their vehicles when passing parked emergency vehicles that have their emergency lights on.***

CURRENT LAW: G.S. 20-157(a) sets out the rules for how drivers are to respond upon the approach of any police or fire department vehicle or public or private ambulance or rescue squad emergency service giving warning signal by appropriate light and by audible siren. In the case of an approaching emergency vehicle, the driver of every other vehicle is required to pull over to the right curb, clear of any intersection, and remain stopped until the emergency vehicle has passed. (The requirement does not apply to drivers traveling in the opposite direction on a four-lane limited access highway with a median divider.) Violation is a Class 2 misdemeanor.

BILL ANALYSIS: House Bill 774 amends G.S. 20-157 to add a requirement that when an authorized emergency vehicle (police or fire department vehicle or public or private ambulance or rescue squad emergency service) is parked, and that emergency vehicle is giving warning signal by appropriate light and by audible siren, the driver of every other vehicle must either change lanes or slow down before passing the stopped emergency vehicle. When driving on a highway with more than two lanes traveling in the direction of the emergency vehicle, the driver must merge into the lane farthest from the emergency vehicle. When driving on a two-lane road, the driver who is passing the stopped emergency vehicle must slow to a speed that is 20 miles less than the posted speed limit. These requirements must be followed "as soon as it is safe, and when not otherwise directed by an individual lawfully directing traffic." (Under the existing statute, courts have held that the approach of emergency vehicles does not relieve a driver of the duty to ascertain whether movement of his or her vehicle can be made in safety, nor does it relieve the driver of the requirement to signal any other approaching vehicle; it also does not authorize a lane change that cannot be made in safety.)

Since the violation is not specifically declared to be a misdemeanor or felony, under G.S. 20-176(a) it is an infraction for which the person may be ordered to pay a penalty of not more than $100.

The bill would become effective October 1, 2001.

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

(a) Upon the approach of any police or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until police or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall not be negligence per se. Violation of this subsection is a Class 2 misdemeanor.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

(c) Outside of the corporate limits of any city or town it shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than 400 feet or to drive into or park such vehicle within a space of 400 feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

(e) It shall be unlawful for the driver of a vehicle, other than one on official business, to park and leave standing such vehicle within 100 feet of police or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of an accident or engaged in rendering assistance to victims of such accident.

HOUSE BILL 1067:
Clarify Auto Repair Bill of Rights

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Smith
Date:	April 16, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1067 would make modifications to the North Carolina Motor Vehicle Repair Act, enacted last session by the General Assembly. The act would become effective when it becomes law.***

CURRENT LAW: Last session, the General Assembly enacted legislation regulating automobile repairs. The act became effective January 1, 2000. These statutes require motor vehicle repair shops to comply with the following concerning repairs and repair estimates:

- Unless waived by the customer in writing, when the estimated cost of repair is more than $350, the shop must prepare a written estimate before doing any diagnostic work or repair. (The customer can waive this requirement for a period of time).
- Before preparing an estimate, a shop must disclose to the customer the amount, if any, of the charge for preparing the estimate and obtain authorization on the written estimate to prepare the estimate. The shop cannot require the customer to waive his or her rights under the act as a prerequisite for repairing the vehicle.
- If the customer leaves the vehicle at the shop when the shop is not open or if the customer permits the shop or another person to deliver the vehicle to the shop, there is an implied partial waiver of the written estimate; however, after the shop completes the diagnostic work, it must prepare the written estimate and obtain authorization to complete the repairs.
- Once notified of the cost of repairs, the customer can authorize, modify, or cancel the repair. If a customer cancels an order for repair or decides not to have the repairs performed, the shop must reassemble the vehicle in a condition reasonably similar to the condition in which it was received, unless the reassembled vehicle would be unsafe
- A customer is entitled to inspect removed parts and, if the shop has no warranty arrangement or exchange parts program with a third party, to have the parts returned to the customer
- The shop must give the customer an invoice of the completed repair work, including an itemized description of all labor, parts, and merchandise supplied and their costs, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.

BILL ANALYSIS: House Bill 1067 would amend the North Carolina Motor Vehicle Repair Act by adding the following:

- Section 1: The requirements of the act would not apply if a customer indicates to the repair shop that the repairs will be paid for by an insurer, under a service contract or mechanical breakdown contract, or under a manufacturer's warranty and the customer's share of the cost of repairs will not exceed $350. Shops would have to prepare an estimate if a customer's share of the cost might exceed $350, even if the balance of the repairs would be paid for by an insurer or under a service contract.

- Section 2: Customers could waive the right to a repair estimate for particular repairs and for any repairs in the future.
- Section 3: If a motor vehicle repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after diagnostic work is completed, there would be an implied partial waiver of the estimate requirements as to the necessary diagnostic work.
- Section 5: A motor vehicle repair shop would be authorized to sell discarded parts removed from a customer's vehicle and retain the proceeds if the customer fails to take possession of the parts within 48 hours after the shop gives the customer notice that the parts are available for inspection. Currently, the statute makes no provision as to what happens to the removed parts if the customer does not claim them.
- Section 6: An itemized description of the labor, parts, and merchandise supplied would not be required if the customer indicates that the repairs will be paid for by an insurer, under a service contract or mechanical breakdown contract, or under a manufacturer's warranty.

In addition, Section 4 changes the Act by providing that if a customer cancels an order to repair, the motor vehicle repair shop would be required to reassemble the vehicle whether or not the vehicle would be unsafe if reassembled. Customers would still have the benefit knowing, via the estimate, what repairs are needed.

Section 7 makes the act effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

move into PCS - PCS fav

EDITION No. 1

H. B. No. 1067 DATE 4/15/01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Cole
( ) Hensley
Sen.)

moves to amend the bill on page 2, line 24-25

( ) WHICH CHANGES THE TITLE

by deleting rewriting the line to read:

"within 48 hours after taking delivery of the repaired vehicle."'''.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1067 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTOMOBILE BILL OF RIGHTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 905

Short Title:	Larceny/Law Enforcement Equip.	(Public)
Sponsors:	Representatives Goodwin; and Barefoot.	
Referred to:	Judiciary III.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO INCLUDE LAW ENFORCEMENT EQUIPMENT IN THE CATEGORY OF FELONY LARCENY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72(b) is amended by adding a new subdivision to read:

"(6) Of any equipment owned by, or in the possession and control of, a law enforcement officer or law enforcement agency and used in the course and scope of employment. As used in this section, the term 'equipment' shall include, but not be limited to, blue or red lights, radios or other electronic equipment, handcuffs, baton or similar impact weapons, oleo capsicum, mace or similar aerosol devices, belt, holster, cases and pouches, protective vest, uniform, badge, issued identification or flashlight."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 905:
Larceny/Law Enforcement Equip.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Goodwin
Date:	April 12, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: House Bill amends the criminal law to include the stealing of law enforcement equipment in the list of cases in which larceny is a felony without regard to the value of the property.

CURRENT LAW:

In general, larceny of property or the receiving or possession of stolen goods having a value of more than $1,000.00 is a Class H felony. If the value of the property is less than $1,000.00, the person is guilty of a Class 1 misdemeanor.

The law includes several exceptions to this rule, including if the larceny is:

1. From the person,
2. Committed in connection with a burglary,
3. Involves explosives or incendiary devices,
4. Involves a firearm,
5. Involves records or papers taken from the State Archives.

In each of these cases, a person who steals or possesses stolen property in any of these categories is guilty of a Class H felony, regardless of the value of the property. Conviction of a Class H felony has a presumptive minimum sentence of from five to six months community, intermediate or active punishment, assuming no prior convictions.

BILL ANALYSIS:

This bill would add a sixth category of property to the list of exceptions. Larceny of any equipment owned by or in the possession of a law enforcement officer or agency and used in the course and scope of employment would be a Class H felony, regardless of the value of the property. This bill would also make it a felony to receive or possess such property if the person knew or had reason to know the property was stolen. The bill lists some of the kinds of equipment that would be covered by this provision.

This bill would become effective December 1, 2001, and apply to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 905 < 1st Edition>

SHORT TITLE: Larceny/Law Enforcement Equip.

SPONSOR(S): Representatives Goodwin; and Barefoot

FISCAL IMPACT

Yes () **No ()** **No Estimate Available (X)**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES					

Department of Correction –No estimate available but assume fiscal impact
Judicial Branch – No estimate available but assume fiscal impact

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:
Adds GS 14-72(b)(6) making larceny an H felony without regard to the value of the property for any equipment owned by, or in the possession and control of a law enforcement officer or agency and used in the scope of employment. It also lists types of law enforcement equipment covered under this provision.

ASSUMPTIONS AND METHODOLOGY:

Under current G.S. 14-72(a) larceny of property valued at more than $1,000 is a Class H felony, while larceny valued at property less than $1,000 is a Class 1 misdemeanor. The various subsections of G.S. 14-72(b) make the crime of larceny a felony without regard to the value of property under certain conditions. Under this proposed bill, larceny of law enforcement equipment would be a felony offense without regard to the value of the stolen

equipment. Moreover, larceny of law enforcement equipment that would be charged as a misdemeanor offense under current law would be elevated to a felony offense.

The Sentencing Commission and the Administrative Office of the Courts (AOC) indicate that the AOC criminal database identifies the number of offenders convicted for misdemeanor larceny but not the number of offenses or convictions for the larceny of law enforcement equipment. For calendar year 2000, there were 28,968 charged with misdemeanor larceny according to the AOC. The Sentencing Commission notes there were 14,596 convictions during a similar time period (99-00). However, the subset number of charges and convictions for larceny of law enforcement equipment is not identified in the database.

Department of Correction

Because of the lack of data, there is no estimate available of the fiscal impact of SB 776 for the Department of Correction. However, Fiscal Research believes there will be fiscal impact because the bill takes an offense that could be a misdemeanor now and makes it a felony, creating the possibility of an active prison sentence. The Sentencing Commission indicates that if 10 of the misdemeanor larceny convictions involved larceny of law enforcement equipment and moved up to Class H, this would result in the need for two additional prison beds the first year and five additional prison beds the second year. This is used as an example only, since there is no count available of larceny of law enforcement equipment.

Judicial Branch

Given there is no method to identify the number of cases of larceny of law enforcement equipment, there is no estimate available of the fiscal impact on the Judicial Branch. Again, however, since the bill takes a potential misdemeanor and makes it a felony, Fiscal Research assumes there will be a fiscal impact on the Judicial Branch.

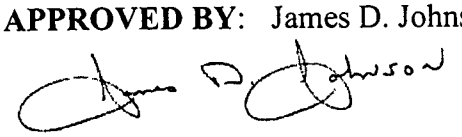
SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson



DATE: April 4, 2001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 17 2001

The House Committee on Judiciary III met on Tuesday, April 17, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole, M. Crawford, Daughtry, Ellis, Esposito, Fox, Holmes, Jarrell, Kiser, and Russell. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Goodwin explains HB 905, A BILL TO BE ENTITLED AN ACT TO INCLUDE LAW ENFORCEMENT EQUIPMENT IN THE CATEGORY OF FELONY LARCENY. Representative Jarrell move to have the PCS before the committee. Motion passes. Representative Capps moves to give a favorable report to the Proposed Committee Substitute, and to give an unfavorable report to the original bill. Motion passes.

HB 970, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE OWNER OF A VEHICLE IS PRESUMED RESPONSIBLE FOR AN INFRACTION FOR A LITTER VIOLATION THAT INVOLVES THE OWNER'S MOTOR VEHICLE, is sent to a sub-committee.

Representative Michaux is recognized to explain HB 1151, A BILL TO BE ENTITLED AN ACT THAT A PERSON SHALL NOT BE INDICTED AS BOTH A HABITUAL FELON AND A VIOLENT HABITUAL LFELON FOR THE SAME OFFENSE, and HB 1152, A BILL TO BE ENTITLED AN ACT TO REPEAL THE HABITUAL FELON LAW. Both bills are sent to a sub-committee.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Wayne Goodwin

Representative Wayne Goodwin
Chairman

Kristen Corbett

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 17, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 905	LARCENY/LAW ENFORCEMENT EQUIPMENT Representative Wayne Goodwin
HB 970	LITTER INFRACTION/CAR OWNER IS RESPONSIBLE Representative Russell Capps
HB 1151	AMEND VIOLENT HABITUAL FELON LAW Representative Mickey Michaux
HB 1152	REPEAL HABITUAL FELON LAW Representative Mickey Michaux

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 4/17/01

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Whitbrook	Kennedy Covington
Judy Gray	FOP
Becki Gray	House Minority Leader's Office

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 905
PROPOSED COMMITTEE SUBSTITUTE H905-CSRO-7 [v.1]

4/17/2001 9:32:06 AM

Short Title: Larceny/Law Enforcement Equip. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO INCLUDE LAW ENFORCEMENT EQUIPMENT IN THE CATEGORY OF FELONY LARCENY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72(b) is amended by adding a new subdivision to read:

"(6) Of any equipment owned by, or in the possession and control of, a law enforcement officer or law enforcement agency and used in the course and scope of employment. As used in this section, the term 'equipment' shall be limited to, blue or red lights, radios or other electronic equipment, protective vests, badges, or issued identification."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 905 A BILL TO BE ENTITLED AN ACT TO INCLUDE LAW ENFORCEMENT EQUIPMENT IN THE CATEGORY OF FELONY LARCENY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 970

Short Title:	Litter Infraction/Car Owner Is Responsible.	(Public)
Sponsors:	Representatives Capps; Barnhart, Davis, Gulley, Hilton, Johnson, Rayfield, Setzer, and Shubert.	
Referred to:	Judiciary III.	

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE OWNER OF A VEHICLE IS PRESUMED RESPONSIBLE FOR AN INFRACTION FOR A LITTER VIOLATION THAT INVOLVES THE OWNER'S MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-399.3. Owner of vehicle involved in littering violation is responsible for an infraction.**

(a) The owner of a vehicle as defined in G.S. 14-399 is presumed responsible for an infraction when litter is blown, scattered, spilled, thrown, or placed from a vehicle in violation of G.S. 14-399, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. Therefore, in addition to the criminal penalties that may be imposed for a violation under G.S. 14-399, a law enforcement officer may also issue a citation to the owner of a vehicle involved in a litter violation for an infraction as defined in G.S. 14-3.1.

(b) A violation reported under this section is deemed a noncriminal violation for which a penalty of one hundred dollars ($100.00) shall be assessed, and for which no points authorized by G.S. 20-16 shall be assigned to the owner of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(c) The citation issued to the owner of the vehicle shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation.

(d) It shall be the duty of all law enforcement officers to enforce the provisions of this section."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 970:
Litter Infraction/Car Owner Is Responsible.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Capps
Date:	April 17, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 970 creates a presumption that the owner of a vehicle is responsible for an infraction for a litter violation that involves the owner's motor vehicle.***

CURRENT LAW:

Under current law, a person who commits the offense of littering in an amount of 15 pounds or less and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than $250.00 nor more that $1,000 for the first offense and the court may require community service of not less than eight nor more than 24 hours. A second offense within three years is punishable by a fine of not less than $500.00 nor more than $$2,000, and the court may impose community service of not less than 16 nor more than 50 hours. A person who litters in an amount exceeding 15 pounds but less than 500 pounds and not for commercial purposes may be fined no less than $500.00 nor more than $2,000 and the court must impose community service of between 24 and 100 hours. Finally, a person who litters in an amount exceeding 500 pounds or in any quantity for commercial purposes or who litters hazardous waste is guilty of a Class I felony and the court may order the violator to (1) remove or render harmless the litter, (2) repair or restore any property damage, or (3) perform community public service.

Existing law also provides that the operator of a vehicle is presumed to have committed the offense.

BILL ANALYSIS:

This bill adds a new section to the criminal law, which provides that the owner of a vehicle is presumed responsible for an infraction when a litter violation involves the owner's vehicle. The bill provides that the infraction citation is in addition to the criminal penalties. The penalty for violation of this section is a fine of $100.00. However, no points under the Motor Vehicle law would be assigned nor would insurance points be authorized. The citation issued to the owner must state the manner in which the violation could be challenged, and the owner must comply with the directions on the citation.

Finally, the bill provides that it shall be the duty of all law enforcement officers to enforce the provisions of this section.

This act would become effective December 1, 2001, and would apply to offenses committed on or after that date.

BACKGROUND:

The fines for violation of the littering law were increased during the 1999 Session.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1151

Short Title:	Amend Violent Habitual Felon Law.	(Public)
Sponsors:	Representatives Michaux; Fitch and Adams.	
Referred to:	Judiciary III.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE INDICTED AS BOTH A HABITUAL FELON AND A VIOLENT HABITUAL FELON FOR THE SAME OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2B of the General Statutes is amended by adding a new section to read:

"**§ 14-7.13. Person shall not be indicted as both a habitual felon and a violent habitual felon.**

Notwithstanding any other provision of this Article or of Article 2A of Chapter 14 of the General Statutes, if a person commits a felony for which the person may also be indicted as a habitual felon or a violent habitual felon, then the State, in addition to the felony charge, may also indict the person as either a habitual felon or a violent habitual felon, but not as both."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1151:
Amend Violent Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Michaux
Date:	April 17, 2001	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1151 amends the State's violent habitual felon law to provide that a person cannot be indicted as both an habitual felon and a violent habitual felon for the same offense.

CURRENT LAW: North Carolina has had statutory provisions regarding the sentencing of habitual felons since 1976. An habitual felon is a person convicted of three felonies. When such a person is charged with a fourth felony, the state may charge in a separate indictment that the person is an habitual felon. The person is first tried on the principal felony. If he or she is found guilty on that charge, the charge of being an habitual felon is then submitted to the jury. If the jury convicts the defendant of being an habitual felon, he or she must then be sentenced as a Class C felon (unless the principal felony is in a higher class).

In 1994 the General Assembly enacted a law concerning violent habitual felons, popularly known as "Three Strikes, You're In". Under this statute, any person who has been convicted of two violent felonies is declared to be a violent habitual felon. The statute defines violent felonies to include all Class A through E felonies as classified by the Structured Sentencing Act. Sentencing procedure is similar to the habitual felon procedure. If the defendant is convicted of the principal felony, the separate indictment charging the defendant as a violent habitual felon may be presented to the same jury. On conviction of being a violent habitual felon, unless the person receives a death sentence for the third felony (if the offense was 1st degree murder), he or she must be sentenced to life imprisonment without parole.

BILL ANALYSIS: House Bill 1151 amends the violent habitual felon law to provide that a person cannot be indicted as both an habitual felon and a violent habitual felon for the same offense.

The act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1152

Short Title:	Repeal Habitual Felon Law.	(Public)
Sponsors:	Representatives Michaux; and Fitch.	
Referred to:	Judiciary III.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE HABITUAL FELON LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 14 of the General Statutes is repealed.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1152:
Repeal Habitual Felon Law

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Michaux
Date:	April 17, 2001	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1152 repeals the State's habitual felon law, but it does not affect the State's violent habitual felon law.

CURRENT LAW: North Carolina has had statutory provisions regarding the sentencing of habitual felons since 1976. An habitual felon is a person who has been convicted of three felonies. When such a person is charged with a fourth felony, the state may charge in a separate indictment that the person is a habitual felon. The person is first tried on the principal felony. If he or she is found guilty on that charge, the charge of being a habitual felon is then submitted to the jury. If the jury convicts the defendant of being a habitual felon, he or she must then be sentenced as a Class C felon (unless the principal felony is in a higher class).

In 1994 the General Assembly enacted a law concerning violent habitual felons, popularly known as "Three Strikes, You're In". Under this statute, any person who has been convicted of two violent felonies is declared to be a violent habitual felon. The statute defines violent felonies to include all Class A through E felonies as classified by the Structured Sentencing Act (although some felonies in those classes do not involve assault). Sentencing procedure is similar to the habitual felon procedure. If the defendant is convicted of the principal felony, the separate indictment charging the defendant as a violent habitual felon may be presented to the same jury. On conviction of being a violent habitual felon, unless the person receives a death sentence for the third felony (if the offense was 1st degree murder), he or she must be sentenced to life imprisonment without parole.

BILL ANALYSIS: House Bill 1152 would repeal the State's habitual felon law as set out in G.S. 14-7.1 through 14-7.6. (copy attached) The bill does not affect the violent habitual felon provisions.

The bill would be effective when it becomes law.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 19, 2001

The House Committee on Judiciary III met on Thursday, April 19, 2001, in Room 421 of the Legislative Office Building at 7:30 AM. The following members were present: Chairman Wayne Goodwin, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole, M. Crawford, Ellis, Esposito, Fox, Hensley, Kiser, and Russell. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Goodwin explains HB 904, A BILL TO BE ENTITLED ANA CT TO INCREASE THE PENALTY FOR MISDEMEANOR CHILD ABUSE TO A CLASS A1 MISDEMEANOR SO THAT IT IS THE SAME AS THE PENALTY FOR ASSAULT ON AN ADULT. Representative Cole moves for a favorable report. Motion passes.

Representative Goodwin explains HB 1286, A BILL TO BE ENTITLED AN ACT REPEALING THE REQUIREMENT OF THE CONFERENCE OF DISTRICT ATTORNEYS TO MAINTAIN A REPOSITORY RELATING TO VICTIMS INFORMATION. Peg Dorer, NC Conference of DA's, speaks for the bill. Representative Ellis moves for a favorable report. Motion passes.

Representative Goodwin explains HB 1247, A BILL TO BE ENTITLED ANA CT TO PROVIDE THAT A SECOND OR SUBSEQUENT CONVICTION OF A SEX OFFENSE COMMITTED AGAINST A MINOR SHALL BE ADDED TO THE LIST OF AGGRAVATING FACTORS TO BE CONSIDERED BY THE COURT WHEN IMPOSING A SENTENCE FOR A CRIMINAL OFFENSE. Representative Cole moves for a favorable report. Motion passes.

There being no further business, the Chair adjourned the meeting at 8:15 AM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 19, 2001
Room 421 LOB
7:30 AM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 904	INCREASE MISDEMEANOR CHILD ABUSE PENALTY Representative Wayne Goodwin
HB 1247	REPEAT CHILD MOLESTATION/AGGRAVATING FACTORS Representative Wayne Goodwin
HB 1248	LOCAL REGULATION OF KEGS OF MALT BEVERAGE Representative Wayne Goodwin
HB 1286	VICTIM'S INFORMATION REPOSITORY Representative Wayne Goodwin

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4/19/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Assoc.
Pat Dorsey	NC Conference of DAs
GERALD HAYES	ATTY
Reggie Kelly	Atty
Cindy Huntsberry	Atty, vice-pres Jo Co. Bar Assn.
Robert Reives	Crime Control Public Safety
Robert Reives, II	Lee County Bar Association
Jimmy L. Love, Sr.	Lee County Bar Association
BRYAN TAYLOR	FORD MOTOR CO.
Ruth Sappore	NCDOT
Jim Edwards	DMV
Joey Hawke	DMV
[illegible]	Brooks Pierce
Matt W. Mougkly	NCAA
John McHugh	Governors office
Ed Paschal	Lee County Commissioner
Wyatt F. Prof[illegible]	Lee Co. Ct.
Chris Gabbert	NC Beer & Wine
Dean Plunkett	NC Beer & Wine.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 904

Short Title:	Increase Misdemeanor Child Abuse Penalty.	(Public)
Sponsors:	Representatives Goodwin; and Barefoot.	
Referred to:	Judiciary III.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR MISDEMEANOR CHILD ABUSE TO A CLASS A1 MISDEMEANOR SO THAT IT IS THE SAME AS THE PENALTY FOR ASSAULT ON AN ADULT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a Class ~~1~~ A1 misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of ~~such~~ the child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to ~~such~~ the child by other than accidental means is guilty of the Class ~~1~~ A1 misdemeanor of child abuse.

(b) The Class ~~1~~ A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 904 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR MISDEMEANOR CHILD ABUSE TO A CLASS A1 MISDEMEANOR SO THAT IT IS THE SAME AS THE PENALTY FOR ASSAULT ON AN ADULT.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HOUSE BILL 1286:
Victim's Information Repository.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Goodwin
Date:	April 19, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1286 repeals a provision of the Crime Victims' Rights Act, which requires that the Conference of District Attorneys maintain a repository of information relating to crime victims.

CURRENT LAW:

In 1998, the General Assembly enacted the Crime Victims' Rights Act to implement the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. The constitutional amendment was passed by the 1995 General Assembly and approved by the voters of the State in 1996.

The Act imposes certain duties on various governmental agencies, such as law enforcement agencies, district attorney's offices, the Attorney General's office, the Department of Correction, the Division of Adult Probation and Parole and the Governor's Clemency Office. The agencies are required to notify and provide specific information and assistance to a crime victim during each step in the investigation, prosecution, sentencing, appeal, probation, and pardon process. The Act provides that, at the sentencing hearing, the prosecuting attorney shall submit a copy of the form containing information about the victim to the court, to be included in the final judgment and commitment transmitted to the Department of Corrections or other agency receiving custody of the defendant. The form is to be maintained by the custodial agency as a confidential file.

The Act also includes a direction to the Conference of District Attorneys to maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under the Act.

BILL ANALYSIS:

This bill repeals the provision requiring the Conference of District Attorneys to maintain a repository of information relating to crime victims.

The bill does not change any other requirement or duty imposed by the Act.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1286 A BILL TO BE ENTITLED AN ACT REPEALING THE REQUIREMENT OF THE CONFERENCE OF DISTRICT ATTORNEYS TO MAINTAIN A REPOSITORY RELATING TO VICTIMS' INFORMATION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

HOUSE BILL 1247:
Repeat Child Molestation/Aggravating Factor

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Goodwin
Date:	April 18, 2001	**Summary by:**	Brenda J. Carter
Version:	1st		Committee Counsel

SUMMARY: ***House Bill 1247 expands the list of aggravating factors that may be considered in felony sentencing to include the fact that the offense for which the defendant is convicted is a second or subsequent conviction of a sex offense committed by the defendant against a minor.***

CURRENT LAW: Under structured sentencing, the Court is required to consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving that an aggravating factor exists. If the court finds that aggravating factors are present and are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range; the aggravated range is the higher of the three sentencing ranges.

G.S. 15A-1340.16(d) sets out a list of more than 20 aggravating factors that include such things as the heinous nature of the crime, the use of a deadly weapon, the age (young or old) or infirmity of the victim, serious injury to the victim, and "any other aggravating factor reasonably related to the purposes of sentencing".

BILL ANALYSIS: House Bill 1247 would add as an aggravating factor the fact that the offense for which the defendant is convicted is a second or subsequent sex offense committed by the defendant against a minor.

One factor that the committee might want to consider in its discussion of this bill is that structured sentencing itself is based on a determination of the prior record level of a felony offender. Points are assigned to each of the offender's prior convictions that the court finds to have been proved. This bill would provide an aggravating factor that is based on a prior offense that is already the basis for a higher prior offense level.

For example, under G.S. 14-202.1 "Taking Indecent Liberties with Children" is a Class F felony. The minimum presumptive sentence for a Class F felony (the offender has no prior record, no aggravating or mitigating factors) is 13-16 months intermediate or active punishment. This means that an active sentence may be imposed, or the offender may be placed on supervised probation or house arrest. A prior Class F felony is 4 points; so a person who commits a 2nd offense would be at Prior Record Level II, where the minimum presumptive sentence is 15-19 months. The aggravated range would allow a 19-24 month minimum sentence.

The bill would become effective December 1, 2001 and apply to offenses committed on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1247 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A SECOND OR SUBSEQUENT CONVICTION OF A SEX OFFENSE COMMITTED AGAINST A MINOR SHALL BE ADDED TO THE LIST OF AGGRAVATING FACTORS TO BE CONSIDERED BY THE COURT WHEN IMPOSING A SENTENCE FOR A CRIMINAL OFFENSE.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 19, 2001

The House Committee on Judiciary III met on Thursday, April 19, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Ellis, Hensley, Holmes, Jarrell, Kiser, and Russell. Brenda Carter, Dianna Jessup and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Rex Baker, bill sponsor, was called forward to explain HB 1052, A BILL TO BE ENTITLED AN ACT DEFINING AND REGULATING LOW-SPEED VEHICLES AND OTHERS. Ed Powell, attorney for Ford Motor Co. speaks for bill. Bryan Taylor, Manager of Sales Operations for the THINK Division of Ford Motor Co. speaks for bill. Vice-Chair Michaux moves to have the Proposed Committee Substitute before the committee. Motion passes. Major Edwards, NCDMV Enforcement speaks for bill. Vice-Chair Michaux makes a motion to give the original bill and unfavorable report, and to give the PCS a favorable report, and to re-refer the bill to the Finance Committee. The motion passes.

Representative Don Davis, bill sponsor, explains HB 844, A BILL TO BE ENTITLED AN ACT TO DIVIDE DISTRICT COURT DISTRICT ELEVEN INTO A SET OF DISTRICTS FOR ELECTORAL PURPOSES ONLY. Jimmy Love, an attorney from Sanford, speaks for the bill. Gerald Hayes, an attorney from Dunn, speaks for the bill. Vice-Chair Michaux moves to have the Proposed Committee Substitute before the committee. Motion passes. Cindy Huntsberry, an attorney from Smithfield, speaks against the bill. Representative Daughtry moves to send the PCS to a sub-committee. Motion passes. Chairman Goodwin appoints Vice-Chair Michaux (Chair), Representative Daughtry, and Representative Hensley to the sub-committee.

The Committee receives a sub-committee report from Representative Cole (Chair), on HB 774, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR HOW DRIVERS SHALL OPERATE THEIR MOTOR VEHICLES WHEN PASSING PARKED EMERGENCY VEHICLES THAT HAVE THEIR EMERGENCY LIGHTS ILLUMINATED. Representative Ellis moves to have to Proposed Sub-Committee Report before the committee. Motion passes. Representative Ellis makes a motion for a favorable report to the PCS and an unfavorable report to the original bill. The Committee passes the motion.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1052
PROPOSED COMMITTEE SUBSTITUTE H1052-CSLK-10 [v.3]

4/12/2001 10:49:03 AM

Short Title: Low Speed Vehicles Defined. (Public)

Sponsors:

Referred to:

April 10, 2001

A BILL TO BE ENTITLED

AN ACT DEFINING AND REGULATING LOW-SPEED VEHICLES AND OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20–4.01 reads as rewritten:

"§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(12a) Golf Cart. – A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

~~(12a)~~(12b) Gross Vehicle Weight Rating (GVWR). – The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter.

~~(12b)~~(12c) Hazardous Materials. – Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803."

SECTION 2. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. –

a. Excursion passenger vehicles. – Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. – Vehicles transporting persons for compensation. This classification shall not include vehicles

operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. – Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. – Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. – Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. – Defined in G.S. 105-164.3.

d2. Motor home or house car. – A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. – A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. – A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. – Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section.

f. Ambulances. – Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. – All other passenger vehicles not included in the above definitions.

h. Low-Speed Vehicle. – Any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour. Low-speed vehicles must comply with the safety standards in 40 C.F.R. 571.500."

SECTION 3. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

(48c) Utility Vehicle. – Vehicle designed and manufactured for general maintenance, security, recreational, and landscaping purposes, but does not include vehicles designed or used primarily for the transportation of persons or property on a street or highway."

SECTION 4. G.S. 20–87 is amended by adding a new subdivision to read:

"(12) Electric vehicles; registration fees. – The license and registration fees for an electric vehicle or low-speed vehicle are the same as those prescribed in this section for vehicles which are not electrically powered."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-121.1 Operation of a Low-speed Vehicle on Certain Roadways**

The operation of a low-speed vehicle, as defined in G.S. 20-4.01(27)h. is authorized with the following restrictions:

(1) A low-speed vehicle may be operated only on streets and highways where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle from crossing a road or street at an intersection where the road or street being crossed has a posted speed limit of more than 35 miles per hour.

(2) A low-speed vehicle shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number.

(3) A low-speed vehicle shall be registered and insured in accordance with G.S. 20-50 and 20-309.

(4) The Department of Transportation may prohibit the operation of low-speed vehicles on any road or highway if it determines that the prohibition is necessary in the interest of safety."

SECTION 6. This act becomes effective July 1, 2001.

HOUSE BILL 1052:
Low-Speed Vehicles Defined.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Baker
Date:	April 19, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1052 amends the Motor Vehicles laws to define and regulate low-speed vehicles.***

BILL ANALYSIS:

This bill adds several definitions to Chapter 20 (Motor Vehicles), including:

- Golf Cart – vehicles designed and manufactured for use on golf courses and not capable of exceeding speeds of 20 mph.
- Low-Speed Vehicle – a four-wheeled electric vehicle, the top speed of which is greater than 20 mph but less than 25 mph, including neighborhood electric vehicles.
- Utility Vehicle – a vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but does not include a vehicle designed and used for transportation of persons or property on the streets or highways, a golf cart, or an all-terrain vehicle.

The bill exempts golf carts from the requirement of registration and certificate of title. It also provides that golf carts are not subject to inspection requirements, or to safety and emissions inspections.

The bill further creates a new Part 6B in Chapter 20 to regulate Low-Speed Vehicles. The bill provides that electric and low-speed vehicles are subject to the license and registration fee requirements for other vehicles. Although low-speed vehicles are defined as a kind of electric vehicle, it is unclear whether there are other kinds of electric vehicles that might be covered by this new provision. In addition, the registration fees for various vehicles are set forth in G.S. 20-87. It is not clear which fee would apply to electric and low-speed vehicles. The fact that a new class of vehicle is being subjected to the registration fee means that this bill must be referred to the Finance Committee.

The bill authorizes the operation of low-speed vehicles on public highways under certain conditions, including:

1. Only operated on streets or highways where the posted speed limit is 35 mph or less, or to cross a street or intersection where the speed limit is greater than 35 mph.
2. Must be equipped with head lamps, stop lamps, turn signals, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
3. Must be operated in compliance with the Motor Vehicle Safety and Financial Responsibility Act.
4. Must be operated by a person with a valid driver's license.
5. DOT may prohibit the operation of low-speed vehicles if necessary in the interest of safety.

This act would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III.**

☐ Committee Substitute for
H.B. 1052 A BILL TO BE ENTITLED AN ACT DEFINING AND REGULATING LOW-SPEED VEHICLES AND OTHERS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 844*
PROPOSED COMMITTEE SUBSTITUTE H844-CSLL-7 [v.2]

4/18/2001 11:39:16 AM

Short Title: District Ct. District 11 Judges' Residency. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE BALANCE IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT ELEVEN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133 is amended by adding a new subsection to read:

"(b1) The qualified voters of District Court District 11 shall elect all eight judges established for the District in subsection (a) of this section, but only persons who reside in Johnston County may be candidates for four of the judgeships, and only persons who reside in Harnett County or Lee County may be candidates for the remaining four judgeships."

SECTION 2. The district court judgeships established for residents of Harnett County or Lee County by Section 1 of this act shall be filled by the district court judges serving District 11 who reside in Harnett County or Lee County on October 1, 2002. Those judges' successors shall be elected for four-year terms in the 2004 election.

SECTION 3. The district court judgeships established for residents of Johnston County by Section 1 of this act shall be filled by the district court judges who reside in Johnston County on October 1, 2002. The terms of office of two of the judges residing in Johnston County expire on the first Monday in December 2002. Those judges' successors shall be elected for four-year terms in the 2002 election. The successors to the remaining judges residing in Johnston County shall be elected for four-year terms in the 2004 election.

SECTION 4. This act becomes effective January 1, 2002, or the date upon which this act is approved under Section 5 of the Voting Rights Act of 1965, whichever is later.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 774 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR HOW DRIVERS SHALL OPERATE THEIR MOTOR VEHICLES WHEN PASSING PARKED EMERGENCY VEHICLES THAT HAVE THEIR EMERGENCY LIGHTS ILLUMINATED.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

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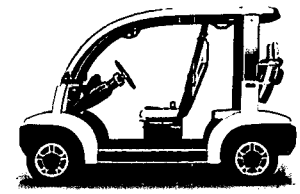

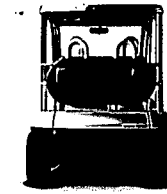

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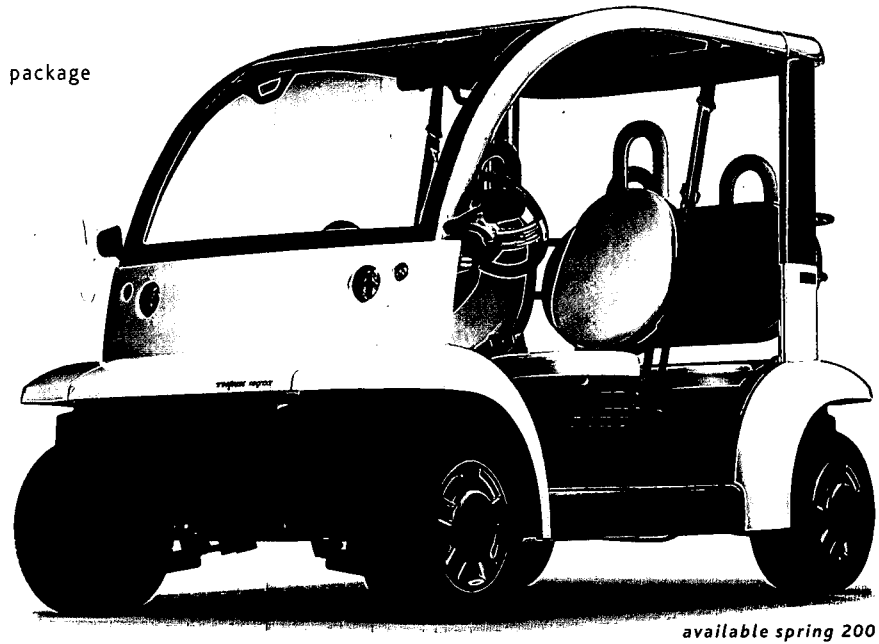

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MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 23, 2001

The House Committee on Judiciary III met on Monday, April 23, 2001, in Room 421 of the Legislative Office Building at 5:00 PM. The following members were present: Chairman Wayne Goodwin, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Esposito, Fox, Hensley, Holmes, Kiser, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Hensley was called forward to explain HB 1230, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CONTROLLED SUBSTANCE ANALOGUE, IF INTENDED FOR HUMAN CONSUMPTION, SHALL BE TREATED AS A SCHEDULE I CONTROLLED SUBSTANCE FOR PURPOSES OF ANY STATE LAW. Representative Kiser moves for a favorable report. Motion passes.

Representative Jean Preston is recognized to explain HB 314, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT WHEN A VEHICLE APPROACHES ANOTHER VEHICLE IN THE OPPOSITE DIRECTION, AT NIGHT, ONLY LOW-BEAM HEADLAMPS AND NO MORE THAN TWO OTHER FACTORY-INSTALLED AUXILIARY LAMPS MAY BE ILLUMINATED. Representative Cole moves to amend. Motion passes. Representative Kiser moves to roll the amendment into a Proposed Committee Substitute, that the PCS be given a favorable report, and that the original be given an unfavorable report.

Representative Mark Hilton is recognized to explain HB 985, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID. Jim Metts from Grass Roots NC speaks for the bill. No vote is taken.

There being no further business, the Chair adjourned the meeting at 5:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 23, 2001
Room 544 LOB
5:00 PM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 314	LOW BEAMS ONLY/APPROACHING ONCOMING TRAFFIC Representative Jean Preston
HB 985	OUT-OF-STATE HANDGUN PERMITS VALID Representative Mark Hilton
HB 1214	SEXUAL ASSAULT Representative Leslie Cox
HB 1230	DATE RAPE DRUGS/ANALOGUES Representative Bob Hensley
HB 1278	CASINO NIGHTS FOR NONPROFITS Representative Bill Owens

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4-23-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
THOMAS S RHYNE III	GRNC - APEX NC
James J. Metts	GRNC - Durham, N.C.
THOMAS G. BEATTIE	GRNC - WAKE FOREST NC.
Raymond Boland	GRNC. Greensboro
John Phelps	NCLM
Doug Lassiter	Lassiter Enterp.
Butch Gunnells	NCSDA
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN, LLP
Jere Russell	N.C. Family Policy Council
[signature]	Parker, Poe, Adams & Bernstein, LLP
[signature]	CCPS
[signature]	GRNC V.P. BURLINGTON NC
Bill Brooks	NCSPC
Rev. MARK CREECH	C. A. L.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1230

Short Title:	Date Rape Drugs/Analogues.	(Public)
Sponsors:	Representatives Hensley; and Fitch.	
Referred to:	Judiciary III.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CONTROLLED SUBSTANCE ANALOGUE, IF INTENDED FOR HUMAN CONSUMPTION, SHALL BE TREATED AS A SCHEDULE I CONTROLLED SUBSTANCE FOR PURPOSES OF ANY STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-94.1. Treatment of controlled substances analogues.**

A controlled substance analogue shall, to the extent intended for human consumption, be treated for the purpose of any State law as a controlled substance in Schedule I."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1230 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CONTROLLED SUBSTANCE ANALOGUE, IF INTENDED FOR HUMAN CONSUMPTION, SHALL BE TREATED AS A SCHEDULE I CONTROLLED SUBSTANCE FOR PURPOSES OF ANY STATE LAW.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 314

Short Title:	Low Beams Only/Approaching Oncoming Traffic.	(Public)
Sponsors:	Representative Preston.	
Referred to:	Judiciary III.	

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHEN A VEHICLE APPROACHES ANOTHER VEHICLE IN THE OPPOSITE DIRECTION, AT NIGHT, ONLY LOW-BEAM HEADLAMPS AND NO MORE THAN TWO OTHER FACTORY-INSTALLED AUXILIARY LAMPS MAY BE ILLUMINATED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-131(d) reads as rewritten:

"(d) Whenever a motor vehicle meets another vehicle on any highway all of the following shall apply:

(1) ~~it~~ It shall be permissible to tilt the beams of the headlamps downward or to substitute ~~therefor~~ for the low-beam headlamps the light from ~~an~~ a pair of auxiliary driving ~~lamp or pair of such~~ lamps subject to the requirement that the tilted headlamps or auxiliary ~~lamp or~~ lamps shall give sufficient illumination under normal atmospheric conditions and on a level road to render clearly discernible a person 75 feet ~~ahead,~~ ahead.

(2) ~~but shall not project a~~ No glaring or dazzling light shall be projected to persons in front of the ~~vehicle: Provided, that~~ vehicle.

(3) ~~at~~ At all ~~times~~ times, as required in ~~G.S. 20-129~~ G.S. 20-129, at least two lights shall be displayed on the front of and on opposite sides of every motor vehicle other than a motorcycle, road roller, road machinery, or farm tractor.

(4) When beams are tilted or lowered, or when low-beam headlamps are used pursuant to subdivision (1) of this subsection, no more than two other factory-installed lights shall be illuminated to the front of the vehicle. All lights installed after original purchase of the vehicle that are aimed forward shall be extinguished so as to minimize the glaring or dazzling white light projected at the oncoming driver."

SECTION 2. This act becomes effective December 1, 2001.

HOUSE BILL 314:
Low Beams Only/Approaching Oncoming Traffic

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Preston
Date:	April 23, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 314 would amend G.S. 20-131 relating to requirements for headlamps and auxiliary lamps on motor vehicles as follows:***

- ***When beams are tilted or lowered, or when low-beam headlamps are used, no more than two other factory-installed lights could be illuminated when meeting another vehicle.***
- ***Drivers of motor vehicles with after-installed lights that are aimed forward, such as visor lights, would be required to extinguish those lights when meeting another vehicle.***

CURRENT LAW: Current law requires at least two headlights on each car or truck (G.S. 20-129(b)). When meeting another car, it is permissible, but not required, to lower the beams of the headlights or to substitute an auxiliary light or lights, so long as these lights provide sufficient illumination of the road.

BILL ANALYSIS: House Bill 314 would change current law to provide that whenever meeting another car 1) when a driver uses low-beam headlights, no more than two other factory-installed lights (such as factory-installed fog lights) could be illuminated to the front of the vehicle and 2) any after-installed lights, such as visor lights, would have to be extinguished to minimize glare.

Violation of this provision would be an infraction, punishable by a fine of not more than $10 (G.S. 20-181).

Ken Levenbook, staff attorney, Bill Drafting, contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Goodwin** (Chair/Chairs) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 314 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT WHEN A VEHICLE APPROACHES ANOTHER VEHICLE IN THE OPPOSITE DIRECTION, AT NIGHT, ONLY LOW-BEAM HEADLAMPS AND NO MORE THAN TWO OTHER FACTORY-INSTALLED AUXILIARY LAMPS MAY BE ILLUMINATED.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 985

Short Title:	Out-of-State Handgun Permits Valid.	(Public)
Sponsors:	Representatives Hilton; Barnhart, Buchanan, Capps, Carpenter, Davis, Eddins, Ellis, Gillespie, Harrington, Howard, Johnson, Russell, Setzer, Sexton, Starnes, Walker, Weatherly, and West.	
Referred to:	Judiciary III.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID.

The General Assembly of North Carolina enacts:

SECTION 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.24. Out-of-state concealed handgun permits valid in North Carolina.**

(a) A nonresident who has a valid concealed handgun permit issued by another state of the United States to carry a concealed handgun in that state may, subject to provisions of North Carolina law, carry a concealed handgun in North Carolina, and the out-of-state permit shall be considered valid in North Carolina.

(b) The Department of Justice shall, not later than 30 days after July 15, 2001, and not less than once every six months thereafter, make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit, and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North

Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state.

The Department of Justice shall enter into a written reciprocity agreement with the appropriate agency in each state: (i) that agrees to permit North Carolina residents to carry concealed handguns in the other state on the basis of a North Carolina-issued concealed handgun permit, or (ii) that will issue a license to carry a concealed handgun in the other state based upon a North Carolina concealed handgun permit. If a reciprocity agreement is reached, the requirement to contact the other state each six months shall be eliminated as long as the reciprocity agreement is in force. Each reciprocity agreement shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 985:
Out-of-State Handgun Permits Valid.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Hilton
Date:	April 23, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 985 amends the Concealed Handgun Permit law to authorize a person who has a valid concealed handgun permit issued by another state to carry a concealed handgun in this State. The bill also directs the Department of Justice to determine, at least once every six months, whether other states recognize a North Carolina concealed handgun permit as valid in the other state, and to enter into reciprocity agreements with the appropriate agency in each state.***

CURRENT LAW:

Under current North Carolina law, a person must meet the following criteria to qualify for a concealed handgun permit:

1. Be a U.S. citizen and a resident of the State for at least 30 days.
2. Be at least 21 years of age.
3. Not suffer from a physical or mental infirmity that prevents safe handling of a gun/
4. Have successfully completed an approved training course.
5. Not be disqualified under the law.

An application for a concealed handgun is made to the sheriff of the county in which the person resides and must include the application fee of $80.00, a full set of fingerprints, an original certificate of completion of an approved training course, and a release, authorizing the sheriff to obtain the applicant's mental health records. The applicant must also bear the cost of the processing the applicant's fingerprints.

Once the sheriff issues the permit, it is valid throughout the State for four years from the date of issuance.

BILL ANALYSIS:

House Bill 985 adds a new provision to the law authorizing a nonresident who has a valid concealed handgun permit issued by another state to carry a concealed handgun in this state, subject to North Carolina law.

The bill also directs the Department of Justice to make inquiry of the permitting authorities in each other state as to whether a North Carolina concealed handgun permit would be recognized as valid in that state and whether a North Carolina resident could apply for a concealed handgun permit based on having a valid NC permit. The Department shall begin making these inquiries within 30 days of July 15, 2001, and at least once every six months thereafter. The Department must also attempt to secure permission from each state for recognition of a valid NC concealed handgun permit in the state, or issuance of a permit based upon a valid NC permit.

The Department shall enter into written reciprocity agreements with the appropriate agency in each state if the state agrees to recognize NC permits or issues a permit based upon a valid NC permit.

The act would become effective when it becomes law.

GRNC

Grass Roots North Carolina / Forum for Firearms Education
Post Office Box 10684, Raleigh, NC 27605, (919) 664-8565, www.grnc.org

Talking points & bill analysis:

HB 985: "Out-of-State Handgun Permits Valid"

- By recognizing out-of-state concealed handgun permits, concealed carry recognition would allow North Carolina concealed carry permit holders to protect themselves if they visit a variety of other states. Many North Carolinians work or travel to adjacent states such as South Carolina and Virginia. For example, once North Carolina recognizes South Carolina's permit, the South Carolina automatically recognizes North Carolina's. Then North Carolina permit holders would be able to carry their handgun concealed for self-defense in those states while on business or vacation.

- Concealed carry permit holders have proven to be good citizens, contributing to reduction in crime in states with concealed handgun laws. As depicted in the table below, permit revocation rates of other states are on par with those of North Carolina and are invariably 1% or less **regardless of issuing standards**.

- Kentucky has had a nearly identical statute in force since 1998, and experiences a lower permit revocation rate (.28%) than North Carolina (.4%). According to the Kentucky State Police, in the first year of concealed handgun recognition in Kentucky, the state experienced a 6.43% drop in murder, a 7.05% drop in rape, and a 10.76% drop in robbery.

- Recognition is a much simpler and cheaper system than reciprocity to administer, requiring no research and interpretation of which concealed carry permit holders are allowed to carry in North Carolina rather than subjective case-by-case interpretation of whether other states laws are similar North Carolina standards.

- As an analogy, all states honor the driver's licenses of other states, regardless of issuing standards. Additionally, research has been unable to find a single state which issues concealed weapon permits without a criminal background check similar to North Carolina's.

- Other state's permit holders would be subject to all North Carolina concealed carry laws and regulations.

- Immediately upon passage of a recognition law in North Carolina, permit holders would gain concealed carry rights in Arizona, Florida, Georgia, Mississippi, New Hampshire, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Other states are currently considering concealed carry recognition laws, including North Carolina's neighboring states of Virginia, South Carolina, Tennessee and Georgia.

Concealed Handgun Permit Revocation Rates

STATE	As of - date	Number Issued	Number Revoked	% Revoked for any reason
FL	12/31/00	736,355	130	0.02
KY	**2/5/01**	**57,923**	**165**	**0.28**
LA	2/1/01	13,645	56	0.4
OK	2/2/01	33,386	17	0.05
NC	**7/5/00**	**42,682**	**182**	**0.4**
TX	1/1/01	215,446	1,553	0.7
TN	12/31/99	90,939	1,176	1.0
UT	3/31/99	22,401	215	1.0
VA	12/98	156,788	940	0.6
WY	1/11/99	5,288	10	0.2

Kristen Corbett (Rep. Goodwin)

From: Kristen Corbett (Rep. Goodwin)
Sent: Thursday, April 19, 2001 9:54 AM
Subject: J-III meeting notice 4-24-01

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2001-2002 SESSION

You are hereby notified that the Committee on **Judiciary III** will meet as follows:

DAY & DATE: **Tuesday, April 24, 2001**

TIME: **7:30 AM AND 12:00 Noon**

LOCATION: **421 LOB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 494	INCREASE PENALTY/CARRYING CONCEALED WEAPON Representative Bob Hensley
HB 842	GUN SALE/CONCEALED HANDGUN PERMIT Representative Cary Allred
HB 946	POSSESSION/MANUFACTURE OF FRAUDULENT IDS Representative Rick Eddins
HB 1020	FELONY/STRIKE LAW ENFORCEMENT OFFICER Representative Wayne Goodwin
X HB 1196	INCREASE CERTAIN SHOPLIFTING PENALTIES Representative Marian McLawhorn
HB 1249	POSSESSING FRAUDULENT ID TO GET LIQUOR Representative Wayne Goodwin

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **11:00 AM** on **April 19, 2001**.

___Principal Clerk
___Reading Clerk - House Chamber

Kristen Corbett (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 24, 2001
Room 421 LOB
7:30 AM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 985	OUT-OF-STATE HANDGUN PERMITS VALID Representative Mark Hilton
HB 1214	SEXUAL ASSAULT Representative Leslie Cox
HB 494	INCREASE PENALTY/CARRYING CONCEALED WEAPON Representative Bob Hensley
HB 842	GUN SALE/CONCEALED HANDGUN PERMIT Representative Cary Allred
HB 946	POSSESSION/MANUFACTURE OF FRAUDULENT IDS Representative Rick Eddins
HB 1020	FELONY/STRIKE LAW ENFORCEMENT OFFICER Representative Wayne Goodwin
HB 1249	POSSESSING FRAUDULENT ID TO GET LIQUOR Representative Wayne Goodwin

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 494 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR UNLAWFULLY CARRYING A CONCEALED WEAPON.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 985 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1020 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT AN ASSAULT INFLICTING SERIOUS INJURY ON A LAW ENFORCEMENT OFFICER IS A CLASS F FELONY AND TO MAKE IT A CLASS I FELONY TO ASSAULT A LAW ENFORCEMENT OFFICER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 494

Short Title:	Increase Penalty/Carrying Concealed Weapon.	(Public)
Sponsors:	Representatives Hensley and Blue.	
Referred to:	Judiciary III.	

March 6, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR UNLAWFULLY CARRYING A CONCEALED WEAPON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269(c) reads as rewritten:

"(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a ~~Class 2~~ Class 1 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a ~~Class 2~~ Class 1 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses on or after that date.

HOUSE BILL 494:
Increase Penalty/Carrying Concealed Weapon

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Reps. Hensley and Blue
Date:	April 10, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 494 would increase the penalty for carrying a concealed weapon from a Class 2 misdemeanor (punishable by up to 60 days' community/intermediate/active punishment) to a Class 1 misdemeanor (punishable by up to 120 days' community/intermediate/active punishment). The act would become effective December 1, 2001 and apply to offenses on or after that date.***

CURRENT LAW: Currently, a person is guilty of carrying a concealed weapon if the person 1) willfully and intentionally 2) carried 3) concealed about his or her person 4) a bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin (star-shaped martial arts throwing weapon), stun gun, pistol, gun, or other deadly weapon of like kind 5) while off his or her premises, *or* if the deadly weapon is a handgun, the person did not have a concealed handgun permit. The punishment if the weapon is a deadly weapon other than a pistol or gun is a Class 2 misdemeanor If the improperly possessed weapon is a pistol or gun, a first offense is also a Class 2 misdemeanor; however, a second or subsequent offense is a Class I felony.

Law enforcement officers and military personnel are exempt from the statute when performing their official duties.

BILL ANALYSIS: House Bill 494 would double the penalty for carrying a concealed weapon from up to 60 days' punishment to up to 120 days' punishment. The bill would not change the elements of the crime.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1020

Short Title:	Felony/Strike Law Enforcement Officer.	(Public)
Sponsors:	Representatives Goodwin, Dedmon; Barefoot and Shubert.	
Referred to:	Judiciary III.	

April 9, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ASSAULT INFLICTING SERIOUS INJURY ON A LAW ENFORCEMENT OFFICER IS A CLASS F FELONY AND TO MAKE IT A CLASS I FELONY TO ASSAULT A LAW ENFORCEMENT OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. The catch line for G.S. 14-34.7 reads as rewritten:

"**§ 14-34.7. Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility.**"

SECTION 2. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.9. Assault on a law enforcement officer.**

Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person assaults a law enforcement officer while the officer is discharging or attempting to discharge his or her official duties."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 1020:
Felony/Strike Law Enforcement Officer

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Reps. Goodwin, Dedmon
Date:	April 23, 2001	**Summary by:**	Dianna Jessup
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1020 would make assault on a law enforcement officer a Class I felony, punishable by up to 15 months' active punishment, and would clarify that assault inflicting serious injury on a law enforcement officer is a Class F felony, punishable by up to 59 months' active punishment. The act would become effective December 1, 2001 and would apply to offenses committed on or after that date.***

CURRENT LAW: Assault is defined in case law as an overt act or attempt, or the unequivocal appearance of attempt, with force and violence, to immediately physically injury another person, with the show of force or menace of violence. The key component is a show of force sufficient to place another in reasonable fear of immediate physical harm. An assault may be the actual unlawful physical touching of another person (battery), or it may be an attempt to unlawfully touch another. North Carolina also recognizes two other means of committing an assault:

- Assault by show of violence, which occurs when 1) the defendant shows an apparent ability to inflict injury (even if there is no actual ability 2) the act is such that a reasonable person would fear harm from it; and 3) the act causes the victim to do something the victim would not have done or not do something the person would have done, such as leaving a place or taking a different route
- Assault by criminal negligence, which occurs, with no intent on the part of the defendant to assault the victim, when 1) an act resulting in injury to another arises from conduct that shows a reckless disregard of the consequences and 2) bodily injury was a foreseeable consequence of the act

Simple assault is generally a Class 2 misdemeanor, punishable by up to 60 days' active/intermediate/community punishment.

Assault using a deadly weapon other than a firearm or inflicting serious bodily injury on an EMT, medical responder, emergency department nurse, emergency department physician, or firefighter discharging the person's official duties is a Class I felony.

BILL ANALYSIS: Section 1 changes the catch line of G.S. 14-34.7 to reflect the content of the section. Section 2 adds a new offense of assault on a law enforcement officer while the officer is discharging or attempting to discharge the officer's duties. Unless another provision of law providing greater punishment applies, a person committing this new offense would be guilty of a Class I felony, punishable by up to 15 months' active punishment.

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4-24-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	Lassiter Enterprises
Carol Covell	BPMHC
THOMAS S RHYNE III	GRNC - APEX NC
James Metts	GRNC - Durham NC.
JEFF OBER	Visitor
MARGARET ANN TYNER	GRNC - RALEIGH, NC
Jeff Rau	GRNC
John Phelps	NCLM
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN, LLP
[illegible]	GRNC VP BURL NC
[illegible]	NCMS
[illegible]	✓
[illegible]	MFTS PA
[illegible]	Freedom Newspapers
Raymond Boiano	GRNC

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 24, 2001
Room 605 LOB
12:30 PM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 842	GUN SALE/CONCEALED HANDGUN PERMIT Representative Cary Allred
HB 946	POSSESSION/MANUFACTURE OF FRAUDULENT IDS Representative Rick Eddins
HB 1249	POSSESSING FRAUDULENT ID TO GET LIQUOR Representative Wayne Goodwin
HB 844	DIVIDE DISTRICT COURT DISTRICT 11 Representative Don Davis
HB 1151	AMEND VIOLENT HABITUAL FELON LAW Representative Mickey Michaux
HB 1152	REPEAL HABITUAL FELON LAW Representative Mickey Michaux
HB 1214	SEXUAL ASSAULT Representative Leslie Cox
HB 1134	DISCIPLINARY ACTION/THREATS OF SCHOOL VIOLENCE Representative Don Davis

ADJOURNMENT

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 335 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM, OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY LICENSED FIREARMS DEALER AND USE THE SALE PROCEEDS FOR LAW ENFORCEMENT PURPOSES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 842 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PISTOL MAY BE PURCHASED BY A PERSON WHO HAS A CONCEALED HANDGUN PERMIT WITHOUT OBTAINING AN ADDITIONAL PERMIT TO PURCHASE A HANDGUN.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 946 A BILL TO BE ENTITLED AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1151 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE INDICTED AS BOTH A HABITUAL FELON AND A VIOLENT HABITUAL FELON FOR THE SAME OFFENSE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 1152 A BILL TO BE ENTITLED AN ACT TO REPEAL THE HABITUAL FELON LAW.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 842

Short Title:	Gun Sale Legal w/ Concealed Handgun Permit.	(Public)
Sponsors:	Representatives Allred, Gibson, Hill; Cole, Gillespie, Gulley, Hilton, and Warwick.	
Referred to:	Judiciary III.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PISTOL MAY BE PURCHASED BY A PERSON WHO HAS A CONCEALED HANDGUN PERMIT WITHOUT OBTAINING AN ADDITIONAL PERMIT TO PURCHASE A HANDGUN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402 reads as rewritten:

"**§ 14-402. Sale of certain weapons without permit forbidden.**

(a) It ~~shall be~~ is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow ~~unless a~~ unless: (i) a license or permit ~~therefor has~~ is first ~~been~~ obtained under this Article by the purchaser or receiver from the sheriff of the county in which ~~that~~ the purchaser or receiver ~~resides.~~resides; or (ii) a valid North Carolina concealed handgun permit is first obtained under Article 54B of the General Statutes by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It ~~shall be~~ is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol or crossbow without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this section:

(1) Antique firearm. – Defined in G.S. 14-409.11.

(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This devise [device] is mechanically held at full or partial draw and released by a trigger or similar mechanism which is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

(4) Historic edged weapon. – Defined in G.S. 14-409.12."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 842:
Gun Sale Legal w/Concealed Handgun Permit.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Allred
Date:	April 24, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 842 authorizes a person who possesses a valid concealed handgun permit to purchase or receive a pistol or crossbow without obtaining a permit to purchase from the sheriff of the county in which the purchaser resides.***

CURRENT LAW:

Current law provides that it is unlawful to sell, give away, transfer, or to purchase or receive a pistol or crossbow unless a permit has been obtained by the purchaser or receiver from the sheriff. Violation of this provision is punishable as a Class 2 misdemeanor.

This provision does not apply to antique firearms or an historic edged weapon.

This provision also does not apply in Warren or Watauga county.

BILL ANALYSIS:

This bill authorizes a person who possesses a valid North Carolina concealed handgun permit to purchase or receive a weapon without the necessity of obtaining another permit from the sheriff. Both permit applications require a criminal history background check. However, the concealed handgun permit also requires that person be at least 21 years of age, a U.S. citizen and resident of the state, that the person not suffer from a physical or mental infirmity that prevents safe handling of a gun, and that the person successfully complete an approved training course. A concealed handgun permit is valid for four years from the date of issuance.

This act would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 946

Short Title: Possession/Manufacture of Fraudulent IDs. (Public)

Sponsors: Representative Eddins.

Referred to: Judiciary III.

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of fraudulent forms of identification.**

(a) If any person shall knowingly and designedly possess a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(b) If any person shall knowingly and designedly manufacture a false or fraudulent form of identification, that person shall be guilty of a Class H felony.

(c) For purposes of this section a "form of identification" shall include all of the following:

(1) An operator's, chauffeur's, commercial driver's, or similar type of drivers license containing a picture, issued by the Division of Motor Vehicles or an equivalent agency in any state.

(2) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina.

(3) A military identification card containing a picture.

(4) A passport.

(5) An alien registration card containing a picture.

(6) Any form of identification containing a picture."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 946
PROPOSED COMMITTEE SUBSTITUTE H946-CSSA-16 [v.1]

4/23/2001 2:29:32 PM

Short Title: Possession/Manufacture of Fraudulent IDs. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE AND TO MAKE IT ILLEGAL TO POSSESS FRAUDULENT IDENTIFICATION WHILE ATTEMPTING TO ENTER THE PREMISES OF AN ALCOHOL PERMITTEE OR OBTAIN ALCOHOLIC BEVERAGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of fraudulent forms of identification.**

(a) If any person shall knowingly and designedly possess a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(b) If any person shall knowingly and designedly manufacture a false or fraudulent form of identification, that person shall be guilty of a Class H felony.

(c) For purposes of this section a "form of identification" shall include all of the following:

(1) An operator's, chauffeur's, commercial driver's, or similar type of drivers license containing a picture, issued by the Division of Motor Vehicles or an equivalent agency in any state.

(2) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina.

(3) A military identification card containing a picture.

(4) A passport.

(5) An alien registration card containing a picture.

(6) Any form of identification containing a picture."

SECTION 2. G.S. 18B-302 is amended by adding a new subsection to read:

"(e1) Fraudulent Possession of Identification. – It shall be unlawful for any person to possess or to display fraudulent identification, as defined in subdivisions (e)(1) through (e)(4) of this section, while attempting to obtain alcoholic beverages or while

attempting to obtain or obtaining permission to purchase alcoholic beverages from a permittee."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 946:
Possession/Manufacture of Fraudulent IDs

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Eddins
Date:	April 24, 2001	**Summary by:**	Brenda J. Carter
Version:	H946-CSSA-16		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 946 makes possession of a false or fraudulent ID a Class 1 misdemeanor. Possessing or displaying fraudulent identification while attempting to purchase alcoholic beverages would also be a Class 1 misdemeanor. Knowingly and designedly manufacturing a false or fraudulent ID would be a Class H felony.***

CURRENT LAW: G.S. 18B-302(e) makes it unlawful for any person under the age of 21 to obtain or attempt to obtain alcoholic beverages by using or attempting to use (1) A fraudulent or altered driver's license; (2) A fraudulent or altered identification document other than a driver's license; (3) A driver's license issued to another person; or (4) An identification document other than a driver's license issued to another person. Under G.S. 18B-302(f), it is also unlawful for any person to permit the use of his drivers license or other ID by a person under the age of 21 in obtaining or attempting to obtain alcoholic beverages. Violation of either of the existing provisions is a Class 1 misdemeanor.

BILL ANALYSIS: ***Section 1*** of the bill creates a new criminal offense of possession or manufacture of fraudulent forms of identification. The bill makes it a Class 1 misdemeanor to "knowing and designedly" possess a false or fraudulent form of identification. The bill makes it a Class H felony to "knowing and designedly" manufacture a false or fraudulent form of identification. The bill specifically applies to any form of identification including a picture: drivers licenses, State or local government issued IDs, military IDs, passports, alien registration cards.

The phrase "knowing and designedly" is currently used in the statute dealing with obtaining property by false pretenses. "The word "knowingly" is generally interpreted to mean that a person is aware of conscious of what he or she is doing. Thus the person is aware of what he or she is doing, and purposely commits the act in violation of the law.

Section 2 of the bill adds a new subsection to G.S. 18B-302, regarding the purchase of alcoholic beverages by underage persons. The bill makes it unlawful for any person to possess or display fraudulent identification while attempting to obtain alcoholic beverages or while attempting to obtain or obtaining permission to purchase alcoholic beverages from a permittee.

While the current law covers the use of false identification to purchase alcohol, it does not cover the use of false identification to gain entrance to establishments that serve alcohol. Many establishments that serve alcoholic beverages are screening for underage persons at the entrance to the establishment to avoid the necessity for those actually serving alcoholic beverages from having to require identification. Other establishments are using a single age identification checkpoint and issuing a form of identification to indicate that the person is old enough to purchase alcoholic beverages, such as wristbands. Section 2 of the bill is an attempt to close these underage drinking law loopholes. Violation would be a Class 1 misdemeanor. (Under G.S. 18B-102, unless a different punishment is otherwise expressly stated, all violations of the State's alcohol laws are Class 1 misdemeanors.)

The bill would become effective December 1, 2001 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1249*

Short Title:	Possessing Fraudulent ID to Get Liquor.	(Public)
Sponsors:	Representatives Goodwin and Alexander (Primary Sponsors).	
Referred to:	Judiciary III.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT ILLEGAL TO POSSESS FRAUDULENT IDENTIFICATION WHILE ATTEMPTING TO ENTER A PERMITTEE OR OBTAIN ALCOHOLIC BEVERAGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-302 is amended by adding a new subsection to read:

"(e1) Fraudulent Possession of Identification. – It shall be unlawful for any person to possess or to display fraudulent identification, as defined in subdivisions (e)(1) through (e)(4) of this section, while attempting to obtain alcoholic beverages or while attempting to obtain or obtaining permission to purchase alcoholic beverages from a permittee."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

4-24-01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARB
Barry Smith	Freedom Newspapers
JEFF OBER	GRNC
THOMAS S RHYNE III	GRNC - APEX, NC
John McHugh	GOV OFFICE
[illegible]	GRNC Greensboro
[illegible]	[illegible] BURLINGTON
John Phelps	NCLM.
[illegible]	NCLMA
[illegible]	NC Beer & Wine Assoc
Dan Fulton	ABC Commission
Barbara Matos	Governors Institute
Dean Plunkett	NC Beer & Wine Assoc.

Kristen Corbett (Rep. Goodwin)

From: Kristen Corbett (Rep. Goodwin)
Sent: Tuesday, May 01, 2001 12:12 PM
Subject: J-III meeting notice 5-3-01

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2001-2002 SESSION

You are hereby notified that the Committee on **Judiciary III** will meet as follows:

DAY & DATE: **Thursday, May 3, 2001**

TIME: **12:00 Noon**

LOCATION: **421 LOB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

SB 346 AMEND STALKING/DOMESTIC VIOLENCE LAWS
Senator Tony Rand

SB 833 POSSESSING FRAUDULENT ID TO GET LIQUOR
Senator Tony Rand

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **12:30 PM** on **May 1, 2001**.

___Principal Clerk
___Reading Clerk - House Chamber

Kristen Corbett (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

April 25, 2001
Room 421 LOB
9:30 AM

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1134 DISCIPLINARY ACTION/THREATS OF SCHOOL VIOLENCE
Representative Don Davis

ADJOURNMENT

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

April 25, 2001

The House Committee on Judiciary III met on Wednesday, April 25, 2001, in Room 421 of the Legislative Office Building at 9:30 AM. The following members were present: Chairman Wayne Goodwin, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Esposito, Fox, Hensley, Jarrell, Kiser, Russell and Weatherly. Brenda Carter, Dianna Jessup and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Don Davis, bill sponsor, was called forward to explain HB 1134, A BILL TO BE ENTITLED AN ACT TO PUNISH STUDENTS WHO CONSPIRE OR THREATEN TO CAUSE VIOLENCE AT SCHOOL, TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, AND TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE. Representative Jarrell makes a motion to have the Proposed Committee Substitute before the committee. The motion passes. The Chairman calls Representative Bonner to Chair the meeting while Representative Goodwin makes a motion for an amendment. Motion for amendment passes. Representative Hensley makes a motion to displace the bill as amended and send bill to a subcommittee. The committee passes the motion.

There being no further business, the Chair adjourned the meeting at 10:20 AM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

VISITOR REGISTRATION SHEET

J3. — Name of Committee

4/25/01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rust	WCFPC
John Phelps	NCLM
Deanne Winnick	NCSBA
Melissa Cohen	DOA
Allison Clapp	NCMA
[illegible]	NCMA
[illegible]	AP
Ken Melton	[illegible]
Becki Gray	House Minority Leader's Office
KAREL F. RYBNICEK, MD	doctor of the day
[illegible]	SPNC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1134

Committee Substitute Reported Without Prejudice 4/23/01

Short Title: Disciplinary Action/Threats of School Violence. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PUNISH STUDENTS WHO CONSPIRE OR THREATEN TO CAUSE VIOLENCE AT SCHOOL, TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, AND TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-391(d3) reads as rewritten:

(d3) (1) A local board of education shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property.

(2) A local board of education shall suspend for a minimum of 30 calendar days or expel pursuant to subsection (d) of this section, any student:

a. Who threatens or conspires to cause injury to persons or property, on educational property or at a school-sponsored curricular or extracurricular activity off educational property, regardless of the seriousness of the threat or plan, or

b. Who knows about, but intentionally does not report to a school authority or other employee, any threat or plan to cause injury to persons or property, on educational property or at a school-sponsored curricular or extracurricular activity off educational property, regardless of the seriousness of the threat or plan.

(3) The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services.

(4) For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

(5) Each local board of education shall include the provisions of this subsection in its code of student conduct, post that portion of the code of conduct in a prominent place in each school, and make that portion of the code of conduct available to the parents of students in the local school administrative unit."

SECTION 2. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-285.1. Duty to report threat of school violence.**

(a) The following definitions apply in this section:

(1) Educational property. – Defined in G.S. 14-269.2.

(2) Employee. – Defined in G.S. 14-269.2.

(3) School. – Defined in G.S. 14-269.2.

(4) School authority. – The principal, head of the school, or other adult employee designated by the principal or head of the school.

(5) School violence. – A criminal offense that is a Class A through E felony or any other criminal offense for which assault is an essential element of proof that occurs at a school or on educational property.

(b) Any person who has good cause to suspect that another person may commit an act of school violence shall report his or her suspicion to the appropriate school authority at his or her school or at the school where the potential act of school violence may occur.

(c) The report may be made orally, by telephone, by electronic mail, or in writing. The report shall include information as is known to the person making the report, including the following:

(1) The name and address, if known, of the suspected perpetrator.

(2) If the perpetrator is a juvenile, the name and address, if known, of the juvenile's parent, guardian, or caretaker.

(3) The nature, time, date, and location of the potential act of school violence.

(4) The name, address, if known, and telephone number, if known, of the person who is making the report.

(5) Any other information that the person making the report believes might be helpful in establishing the need for intervention or precautionary measures to be taken by a school authority.

(d) If the person making the report refuses to give a name, the school authorities shall still investigate the potential act of school violence.

(e) Intentional failure to report a potential act of school violence as required by this section is a Class 3 misdemeanor."

SECTION 3. Article 1 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-3.2. Punishment of misdemeanor committed with intent to intimidate or retaliate against a person for reporting a potential act of school violence.**

If any Class 2 or Class 3 misdemeanor is committed against a victim because the victim reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed against a victim because the victim reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class I felony."

SECTION 4. Article 61 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1056. Grant of immunity to person who reports potential act of school violence.**

(a) No prosecutor shall try any suspect who reported a potential act of school violence in compliance with G.S. 14-285.1 for the offense of school violence reported, or for any related offense believed to have been committed within the prosecutorial district as defined in G.S. 7A-60.

(b) When a prosecutor enters into any arrangement authorized by this section, written notice fully disclosing the terms of the arrangement must be provided to the trial court, the defense counsel, or to the defendant if not represented by counsel, against whom the testimony is to be offered, within a reasonable time prior to any proceeding in which the person with whom the arrangement is made is expected to testify. Upon motion of the defendant or the defendant's counsel on grounds of surprise or for other good cause or when the interests of justice require, the court must grant a recess or continuance."

SECTION 5. Sections 2, 3, and 4 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law and applies beginning with the 2001-2002 school year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1134

Committee Substitute Reported Without Prejudice 4/23/01
PROPOSED COMMITTEE SUBSTITUTE H1134-CSLH-9 [v.3]

4/24/2001 3:42:13 PM

Short Title: Must Report Threats of School Violence. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE, TO PROVIDE THAT IDENTITY INFORMATION OF A PERSON WHO REPORTS A POTENTIAL THREAT IS CONFIDENTIAL AND TO AUTHORIZE THE LRC TO STUDY ISSUES RELATED TO SCHOOL VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-391 is amended by adding a new subsection to read:

"(f1) Local boards of education shall notify students and their parents that there is a legal duty to report potential acts of school violence to the appropriate school authority."

SECTION 2. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-285.1. Duty to report threat of school violence.**

(a) The following definitions apply in this section:

(1) Educational property. – Defined in G.S. 14-269.2.

(2) Employee. – Defined in G.S. 14-269.2.

(3) School. – Defined in G.S. 14-269.2.

(4) School authority. – The principal, head of the school, or other adult employee designated by the principal or head of the school.

(5) School violence. – A criminal offense that is a Class A through E felony or any other criminal offense for which assault is an essential element of proof that occurs at a school or on educational property.

(b) Any person who has good cause to suspect that another person may commit an act of school violence shall report his or her suspicion to the appropriate school authority at his or her school or at the school where the potential act of school violence may occur.

(c) The report may be made orally, by telephone, by electronic mail, or in writing. The report shall include information as is known to the person making the report, including the following:

(1) The name and address, if known, of the suspected perpetrator.

(2) If the perpetrator is a juvenile, the name and address, if known, of the juvenile's parent, guardian, or caretaker.

(3) The nature, time, date, and location of the potential act of school violence.

(4) The name, address, if known, and telephone number, if known, of the person who is making the report. However, this information shall remain confidential as provided by subsection (e) of this section.

(5) Any other information that the person making the report believes might be helpful in establishing the need for intervention or precautionary measures to be taken by a school authority.

(d) If the person making the report refuses to give a name, the school authorities shall still investigate the potential act of school violence.

(e) The name, address, telephone number, and any other identity information of a person who reports a potential act of school violence is confidential and shall be disclosed only to the appropriate school authority and the appropriate law enforcement agencies. Except as provided by this subsection, the disclosure of any information deemed confidential under this subsection is a Class 3 misdemeanor.

(f) Intentional failure to report a potential act of school violence as required by this section is a Class 3 misdemeanor."

SECTION 3. Article 1 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-3.2. Punishment of misdemeanor committed with intent to intimidate or retaliate against a person for reporting a potential act of school violence.**

If any Class 2 or Class 3 misdemeanor is committed against a victim because the victim reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed against a victim because the victim reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class I felony."

SECTION 4. Article 61 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1056. Grant of immunity to person who reports potential act of school violence.**

(a) No prosecutor shall try any suspect who reported a potential act of school violence in compliance with G.S. 14-285.1 for the offense of school violence reported, or for any related offense believed to have been committed within the prosecutorial district as defined in G.S. 7A-60.

(b) When a prosecutor enters into any arrangement authorized by this section, written notice fully disclosing the terms of the arrangement must be provided to the trial court, the defense counsel, or to the defendant if not represented by counsel, against whom the testimony is to be offered, within a reasonable time prior to any proceeding in which the person with whom the arrangement is made is expected to testify. Upon motion of the defendant or the defendant's counsel on grounds of surprise or for other good cause or when the interests of justice require, the court must grant a recess or continuance."

SECTION 5. The Legislative Research Commission may study the issue of school violence, the laws and public policies regarding that issue, the results and effectiveness of the laws enacted by this act to address the need to report potential acts of school violence, and any other issue relevant to the study. The Legislative Research Commission may submit a progress report of its study to the 2001 General Assembly, Regular Session 2002, upon its convening and shall submit its final report to the 2003 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation.

SECTION 6. There is appropriated from the General Fund to the General Assembly the sum of thirty thousand dollars ($30,000) for the 2001-2002 fiscal year to implement this study.

SECTION 7. Section 1of this act is effective when it becomes law and applies beginning with the 2001-2002 school year. Sections 2, 3, and 4 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 5 and 6 of this act become effective July 1, 2001. Section 7 of this act is effective when it becomes law. Sections 1 through 4 of this act expire July 1, 2004.

HOUSE BILL 1134:
Disciplinary Action/Threats of School Violence.

BILL ANALYSIS

Committee: House Judiciary III
Date: April 24, 2001
Version: Second

Introduced by: Rep. Davis
Summary by: Dianna Jessup
Committee Counsel

DISCIPLINE FOR STUDENT WHO CONSPIRES OR THREATENS TO CAUSE SCHOOL VIOLENCE

Current Law: Currently, G.S. 115C-391(d3) requires local boards to suspend for 365 calendar days any student who, at school or a school-sponsored activity:

- Brings to school or possesses at school a weapon (firearm or explosive device).
- Make a false bomb threat against a school.
- Perpetrates a bomb hoax against a school.

For other conduct, local boards may suspend students for a maximum of the remainder of the school year, in accordance with their discipline policies. Boards may expel (i.e., permanently remove) a student who is at least 14 whose behavior indicates the student's continued presence in school constitutes a clear threat to the safety of others.

Bill Summary: The bill would amend G.S. 115C-391(d3) by requiring local boards to suspend for at least 30 calendar days or expel any student who:

- Threatens or conspires to injure persons or property at school or at a school-sponsored activity, or
- Knows, but intentionally does not report to school authority, a threat or plan to injure persons or property at school or at a school-sponsored activity.

The bill also would require local boards to post the provisions of G.S. 115C-391(d3) in a prominent place at each school and make these provisions available to parents.

Effective when it becomes law and applies beginning with 2001-2002 school year.

DUTY TO REPORT THREATS OF SCHOOL VIOLENCE

House Bill 1134 would amend Article 36 of Chapter 14 of the General Statutes (Offenses Against Safety) by creating a new G.S. 14-285.1. This new section would require any person to report to the appropriate school authority when that person has good cause to suspect that another person may commit an act of school violence. Schools must investigate this report even if the person refuses to give a name. School violence is defined as a criminal offense that is a Class A through E felony or other criminal offense that includes assault as an essential element of proof.

It would be a Class 3 misdemeanor to intentionally fail to report a potential act of school violence. Conviction of a Class 3 misdemeanor is a minimum 1-10 days of community punishment, assuming no prior convictions, a maximum fine of $200, or both the community punishment and the fine.

Effective December 1, 2001, and applies to offenses committed on or after that date.

INCREASED CRIMINAL PENALTY FOR RETALIATION AGAINST PERSON WHO REPORTS THREATS OF SCHOOL VIOLENCE

The bill also would amend Article 1 of Chapter 14 of the General Statutes (Felonies and Misdemeanors) by adding a new G.S. 14-3.2 that would increase the level of offense when a person retaliates against a person who made a report of school violence.

It would be a Class 1 misdemeanor if a person commits a class 2 or 3 misdemeanor against any person in retaliation for making a report of school violence. Conviction of a Class 1 misdemeanor is a minimum 1-45 days of community punishment, a fine in the court's discretion, or both. 1

It would be a Class I felony if a person commits a Class A1 or Class 1 misdemeanor against any person in retaliation for making a report of school violence. Conviction of a Class I felony has a presumptive minimum sentence of four to six months community punishment, assuming no prior convictions.

Effective December 1, 2001, and applies to offenses committed on or after that date.

IMMUNITY FROM CRIMINAL PROSECUTION FOR PERSON WHO REPORTS THREAT OF SCHOOL VIOLENCE

The bill would amend Article 61 of Chapter 15A of the General Statutes (Witness Immunity) by adding a new G.S. 15A-1056. This new statute would grant immunity from criminal prosecution to any person who reports a potential act of school violence or any related offense. The prosecutor must provide full written disclosure to the trial court, the defense counsel, and the defendant, if not represented, of this grant of immunity within a reasonable time before any proceeding in which the individual granted the immunity is expected to testify.

Effective December 1, 2001, and applies to offenses committed on or after that date.

Robin Johnson, staff attorney, Research Division, contributed to this summary.

H1134-SMSW-001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

May 8, 2001

The House Committee on Judiciary III met on Tuesday, May 8, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Ellis, Hensley, Jarrell, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Patrick Ballentine was recognized to explain SB 30, A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL TO TAKE SEA OATS. Representative Ellis moves to give a favorable report to the bill. The motion passes.

Senator Dan Robinson was recognized to explain SB 465, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO DISCHARGE A FIREARM INTO AN UNOCCUPIED BUILDING, VEHICLE, OR OTHER ENCLOSURE. Representative Mark Crawford move to give a favorable report to the bill. Motion passes. Representative Michaux moves to amend the motion to recommend that the bill be re-referred to Appropriations. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

May 8, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 465	SHOOT INTO PROPERTY/FELONY Senator Dan Robinson
SB 30	OUTLAW TAKING OF SEA OATS Senator Patrick Ballance

ADJOURNMENT

VISITOR REGISTRATION SHEET

J-III
Name of Committee

5/8/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	Mercer & Assoc.
John Medlock	Gov Office
Dan Robinson	Senate
Scott Southern	UNC-TV
Jeanne Brown	
Harriett McFarland	VA10
Stephania Sidberry	Governor's Institute
Ferris Morrison	Governor's Institute 990-9559
Anthony McLeod	Governor's Institute
DB Ross	Staff

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 30
Judiciary I Committee Substitute Adopted 3/14/01

Short Title: Outlaw Taking of Sea Oats. (Public)

Sponsors:

Referred to:

February 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE SEA OATS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-129 reads as rewritten:

"**§ 14-129. Taking, etc., of certain wild plants from land of another.**

No person, firm or corporation shall dig up, pull up or take from the land of another or from any public domain, the whole or any part of any Venus flytrap (Dionaea muscipula), trailing arbutus, Aaron's Rod (Thermopsis caroliniana), Bird-foot Violet (Viola pedata), Bloodroot (Sanguinaria canadensis), Blue Dogbane (Amsonia tabernaemontana), Cardinal-flower (Lobelia cardinalis), Columbine (Aquilegia canadensis), Dutchman's Breeches (Dicentra cucullaria), Maidenhair Fern (Adiantum pedatum), Walking Fern (Camptosorus rhizophyllus), Gentians (Gentiana), Ginseng (Panax quinquefolium), Ground Cedar, Running Cedar, Hepatica (Hepatica americana and acutiloba), Jack-in-the-Pulpit (Arisaema triphyllum), Lily (Lilium), Lupine (Lupinus), Monkshood (Aconitum uncinatum and reclinatum), May Apple (Podophyllum peltatum), Orchids (all species), Pitcher Plant (Sarracenia), ~~Sea Oats (Uniola paniculata),~~ Shooting Star (Dodecatheon meadia), Oconee Bells (Shortia galacifolia), Solomon's Seal (Polygonatum), Trailing Christmas (Greens-Lycopodium), Trillium (Trillium), Virginia Bluebells (Mertensia virginica), and Fringe Tree (Chionanthus virginicus), American holly, white pine, red cedar, hemlock or other coniferous trees, or any flowering dogwood, any mountain laurel, any rhododendron, or any ground pine, or any Christmas greens, or any Judas tree, or any leucothea, or any azalea, without having in his possession a permit to dig up, pull up or take such plants, signed by the owner of such land, or by his duly authorized agent. Any person convicted of violating the provisions of this section shall be guilty of a Class 3 misdemeanor only punished by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each offense. The provisions of this section shall not apply to the Counties of Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare,

Duplin, Edgecombe, Franklin, Gaston, Granville, Hertford, McDowell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan and Swain."

SECTION 2. Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-129.2. Unlawful to take sea oats.**

(a) It is unlawful to dig up, pull up, or take from the land of another or from any public domain the whole or any part of any Sea Oats (Uniola paniculata) without the consent of the owner of that land.

(b) Any person convicted of violating the provisions of this section shall be guilty of a Class 3 misdemeanor and shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) for each offense."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 30:
Outlaw Taking of Sea Oats

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Ballentine
Date:	May 8, 2001	**Summary by:**	Brenda J. Carter
Version:	Second Edition		Committee Counsel

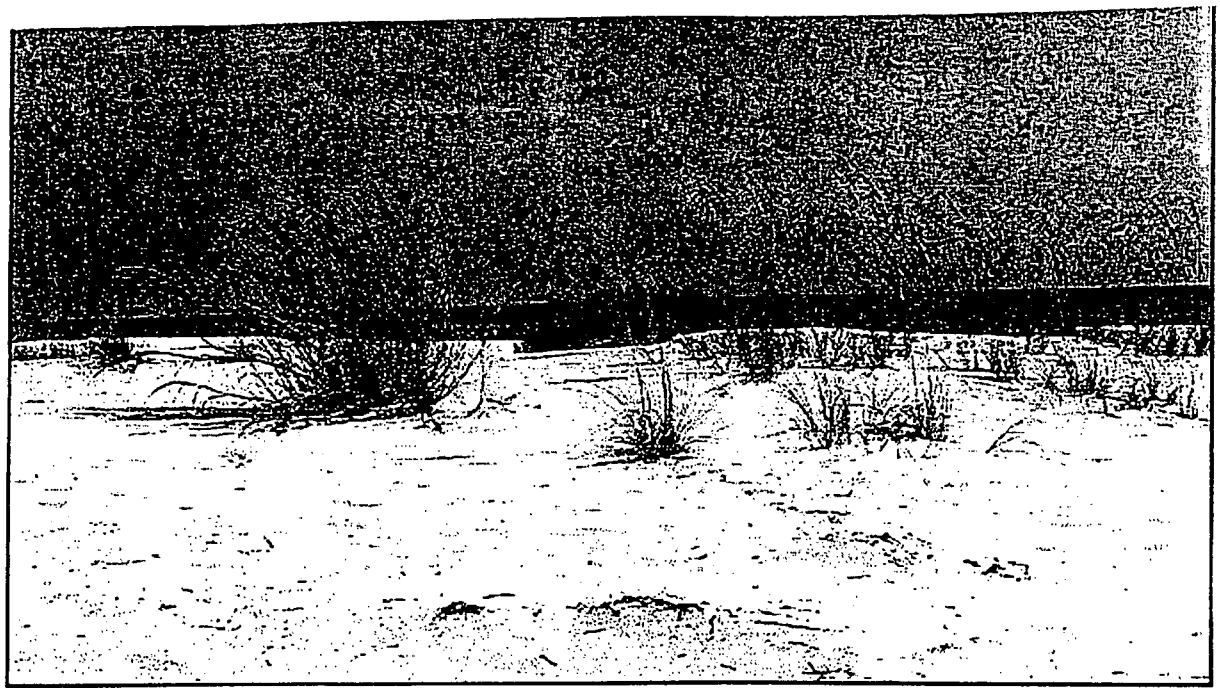
SUMMARY: Senate Bill 30 makes it a Class 3 misdemeanor to take sea oats.

CURRENT LAW: G.S. 14-129 makes it unlawful to take certain wild plants from the land of another. The prohibition includes the taking of sea oats. However, the current statute is inapplicable in 22 of the State's 100 counties. Violation of the existing law is a Class 3 misdemeanor, punishable by a fine of $10 to $50 for each offense.

BILL ANALYSIS: Senate Bill 30 makes it a Class 3 misdemeanor to take sea oats from the land of another or from the public domain without permission of the owner of the land. The offense is punishable by a fine of not less than $25 and not more than $200 for each offense. The bill makes a conforming amendment to GS 14-129, since the taking of sea oats would become a statewide criminal offense.

The fiscal note for the bill (attached) indicates no fiscal impact.

BACKGROUND: Sea oats *(Uniola paniculata)* is a tall coastal grass of the southeast United States; a coarse perennial grass that grows to 6 ft. in height. It's creeping rhizominous roots (horizontal, usually underground stem that often sends out roots and shoots from its nodes), leaves, and stems are said to be very important in stabilizing sand dunes. In most states, as a preservation measure, it is unlawful to gather any part of the plant. It is common on dunes, beaches, and loose-sand seashores from Texas to Virginia. Sea oats plants are sometimes grown and installed as part of the hurricane recovery projects.



NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 30 (Second Edition) CSSU-2 [v.4]

SHORT TITLE: Outlaw Taking of Sea Oats

SPONSOR(S): Senator Ballantine

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES			No Fiscal Impact		
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: Applies to offenses committed on or after December 1, 2001

BILL SUMMARY:
Creates new section G.S. 14-129.2 making it a Class 3 misdemeanor to dig up, pull up, or take sea oats from another person's or public property. The new section would apply statewide and punishment is specified as a fine of not less than $25 or more than $200.

ASSUMPTIONS AND METHODOLOGY:

According to the Sentencing Commission, it is not known how many offenders might be sentenced under this bill since this bill covers conduct that is currently not a criminal offense. However, since this proposed bill creates a new Class 3 misdemeanor offense punishable only by a fine, it is not expected to have a significant impact on the prison population. Moreover, under Structured Sentencing Guidelines, the range of sentence lengths for Class 3 misdemeanants is 1-20 days, thereby not impacting the prison population.

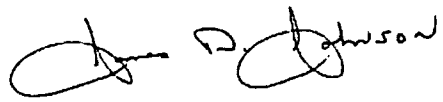
The Judicial Branch does not have a specific code for offenses relating to G.S. 14-129, but available data for calendar year 2000 reveals 33 charges filed under present G.S. 14-129. Nevertheless, Judicial would not expect the proposed bill to result in a substantial number of new cases.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson

APPROVED BY: James D. Johnson



DATE: March 28, 2001

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 465 < 2nd Edition>

SHORT TITLE: Shoot Into Property/Felony

SPONSOR(S): Senators Robinson, Albertson, Ballance, et al

FISCAL IMPACT

Yes (X) **No ()** **No Estimate Available ()**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES					
Department of Correction	(A fiscal impact is expected, but no estimate is available)				
Judicial Branch					
Jury Fees	**$924**	**$11,088**	**$11,088**	**$11,088**	**$11,088**
Indigent Defense	**$1,634**	**$21,570**	**$23,727**	**$26,099**	**$28,709**
Total	**$2,558**	**$32,658**	**$34,815**	**$37,187**	**$39,797**

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:
Amends GS 14-34.1, making it a Class I felony to willfully or wantonly discharge, or attempt to discharge, a firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure that is *unoccupied.*

ASSUMPTIONS AND METHODOLOGY:

Phone interviews with two district attorneys indicate that the conduct the bill makes a Class I felony may currently result in convictions for damage to real property, which is a Class 1 misdemeanor. Thus, some cases currently disposed of as Class 1 misdemeanors would instead be disposed of as Class I felonies. As a result of this upgrade, convicted defendants would be more likely to serve longer sentences, and trials and pleas would demand more court time and cost in disposing of cases.

Judicial Branch

During calendar year 2000, 6,861 defendants were charged with the misdemeanor offense of damaging real property under G.S. 14-127. Based on DA estimates, AOC assumes that 6% of these defendants might be charged under the bill for using a firearm, or 412 defendants. Of these, AOC estimates that 5% go to trial (21 defendants) and that 30% would plead guilty (124 defendants) under current law. In addition, AOC estimates that the average in-court trial time for a Class I felony is 9 hours, or 5 hours longer than the Class 1 misdemeanor plea; the average in-court time for the Class I felony guilty plea is about 37 minutes, or 7 minutes longer than the Class 1 misdemeanor plea.

Trials

For 21 misdemeanor trials under current law, there would be 84 hours of court time required, or 14 days (assuming six hours of in-court time per day). At a cost of $1,022 per day, the total cost would be $14,308. For 21 felony trials under the bill, there would be 189 hours of court time required, or 32 days (assuming six hours of in-court time per day). At a cost of $2,559 for each 1½ day of trial, the total cost for 21 trials would be $53,739.

Fiscal Research excludes personnel costs for trials in its calculation if the workload increase is less than 3,600 hours. Thus, the only costs included for trials would be jury pool costs of $528 per trial ($360 for the 1st day and $168 for the 2nd day), or $11,088 for 21 trials.

Pleas

For 124 misdemeanor guilty pleas under current law, there would be 62 hours, or 10.3 days. At a cost of $1,022 per day, the total cost would be $10,526. AOC assumes that 50% of the defendants would plead guilty under the bill; for 206 guilty pleas, there would be 128 hours of court time required, or 21.3 days. At a cost of $1,354 per day, the cost for pleas under the proposed bill would be $$28,822. However, Fiscal Research does not include the costs for guilty pleas in its calculation since the workload for pleas and trials is less than 3,600 hours.

Indigent Defense

In determining indigent defense costs, the Administrative Office of the Courts made the following assumptions:

1. Sixty-six percent of defendants (current indigency rate for defendants charged with occupied property) would be indigent under this bill, while 25.8% would be indigent under current law.
2. Under the proposed bill 50% of the defendants (current guilty pleas for felony offense for occupied property) would plead guilty, while under current law, 30% would plead guilty.
3. Under the bill, longer trials would be required due to the felony enhancement.

4. District court (misdemeanor offense under current law) indigent cost at $50 per hour and superior court (felony offense under the bill) indigent cost at $60 per hour.

AOC anticipates that 25.8% of these defendants would be indigent under current law, or 5 defendants with trials, and 32 defendants with guilty pleas. For trials, they estimate that 4 in-court hours and 1 hour for preparation time would be needed, for a total of 5 hours. For guilty pleas, they estimate that ½ hour in-court time and ½ hour of preparation time would be needed, for a total of 1 hour. At a cost of $50 per hour, indigent costs for trials would be $1,250 (5 trials x 5 hours x $50) and guilty pleas at $1,600 (32 pleas x 1 hour x $50), for a total of $2,850.

Further, AOC expects 66% of these defendants would be indigent under the bill, or 14 defendants with trials, and 136 defendants with guilty pleas. For trials, they estimate that 9 in-court hours and a minimum of 2 hours for preparation time would be needed, for a total of 11 hours. For guilty pleas, 37 minutes in-court time and 1 hour of preparation time would be needed. At a cost of $60 per hour, indigent costs are estimated for trials at $9,240 (14 trials x 11 hours x $60) and guilty pleas at $13,219 (136 pleas x 1hour and 37 minutes x $60). **Thus, the incremental increase in indigent costs would total $7,990 for trials and $11,619 for pleas, totaling $19,609. Total indigent costs would increase by 10%, for a total of $21,570 in the 2nd year and thereafter.**

Department of Correction

Since the proposed bill creates a new offense, it is not known how many offenders might be convicted of discharging a firearm into unoccupied property. As indicated earlier, discharging a firearm into unoccupied property may currently result in convictions (Misdemeanor 1) for damage to real property. The Sentencing Commission noted that in Fiscal Year 1999-2000, 95 offenders convicted for damage to real property received active sentences greater than 90 days (i.e., prison sentences).

Although it is not known how many of these convictions involved use of a firearm, Fiscal Research feels this data indicates some offenders are going to receive active sentences for firing into unoccupied property. As a Class I felony, on average each offender would receive an active sentence of 6 months. *If*, for example, there were 100 convictions for the proposed offense per year, approximately 13 offenders would receive an active sentence of about 6 months and would result in 7 additional prison beds the first year. By the second year, a combination of active sentences and probation revocations would result in the need for about 26 additional prison beds.

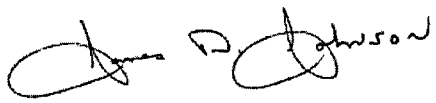
Because there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, each active sentence would create the need for an additional prison bed and have a fiscal impact on the Department of Correction (DOC). However, because there is no accurate count of the number of offenses for shooting into unoccupied property, there is no estimate available of the fiscal impact on the DOC.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson



DATE: April 4, 2001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 30 A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL TO TAKE SEA OATS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 465

Judiciary II Committee Substitute Adopted 4/3/01
Third Edition Engrossed 4/24/01

Short Title: Shoot Into Property Felony. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO DISCHARGE A FIREARM INTO AN UNOCCUPIED BUILDING, VEHICLE, OR OTHER ENCLOSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-34.1 reads as rewritten:

"**§ 14-34.1. Discharging certain barreled weapons or a firearm into ~~occupied~~ property.**

(a) Any person who willfully or wantonly discharges or attempts to discharge:

(1) Any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second; or

(2) A firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony.

(b) Any person who willfully or wantonly discharges a firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, that is not occupied is guilty of a Class I felony, unless that person owns or lawfully has control of that property, or has the express permission of the person who owns or lawfully has control of that property."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 465 < 2nd Edition>

SHORT TITLE: Shoot Into Property/Felony

SPONSOR(S): Senators Robinson, Albertson, Ballance, et al

FISCAL IMPACT

Yes (X) **No ()** **No Estimate Available ()**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES					
Department of Correction	(A fiscal impact is expected, but no estimate is available)				
Judicial Branch					
Jury Fees	**$924**	**$11,088**	**$11,088**	**$11,088**	**$11,088**
Indigent Defense	**$1,634**	**$21,570**	**$23,727**	**$26,099**	**$28,709**
Total	**$2,558**	**$32,658**	**$34,815**	**$37,187**	**$39,797**

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch and Dept. of Correction

EFFECTIVE DATE: This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:
Amends GS 14-34.1, making it a Class I felony to willfully or wantonly discharge, or attempt to discharge, a firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure that is *unoccupied*.

ASSUMPTIONS AND METHODOLOGY:

Phone interviews with two district attorneys indicate that the conduct the bill makes a Class I felony may currently result in convictions for damage to real property, which is a Class 1 misdemeanor. Thus, some cases currently disposed of as Class 1 misdemeanors would instead be disposed of as Class I felonies. As a result of this upgrade, convicted defendants would be more likely to serve longer sentences, and trials and pleas would demand more court time and cost in disposing of cases.

Judicial Branch

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2. Under the proposed bill 50% of the defendants (current guilty pleas for felony offense for occupied property) would plead guilty, while under current law, 30% would plead guilty.
3. Under the bill, longer trials would be required due to the felony enhancement.

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AOC anticipates that 25.8% of these defendants would be indigent under current law, or 5 defendants with trials, and 32 defendants with guilty pleas. For trials, they estimate that 4 in-court hours and 1 hour for preparation time would be needed, for a total of 5 hours. For guilty pleas, they estimate that ½ hour in-court time and ½ hour of preparation time would be needed, for a total of 1 hour. At a cost of $50 per hour, indigent costs for trials would be $1,250 (5 trials x 5 hours x $50) and guilty pleas at $1,600 (32 pleas x 1 hour x $50), for a total of $2,850.

Further, AOC expects 66% of these defendants would be indigent under the bill, or 14 defendants with trials, and 136 defendants with guilty pleas. For trials, they estimate that 9 in-court hours and a minimum of 2 hours for preparation time would be needed, for a total of 11 hours. For guilty pleas, 37 minutes in-court time and 1 hour of preparation time would be needed. At a cost of $60 per hour, indigent costs are estimated for trials at $9,240 (14 trials x 11 hours x $60) and guilty pleas at $13,219 (136 pleas x 1hour and 37 minutes x $60). **Thus, the incremental increase in indigent costs would total $7,990 for trials and $11,619 for pleas, totaling $19,609. Total indigent costs would increase by 10%, for a total of $21,570 in the 2nd year and thereafter.**

Department of Correction

Since the proposed bill creates a new offense, it is not known how many offenders might be convicted of discharging a firearm into unoccupied property. As indicated earlier, discharging a firearm into unoccupied property may currently result in convictions (Misdemeanor 1) for damage to real property. The Sentencing Commission noted that in Fiscal Year 1999-2000, 95 offenders convicted for damage to real property received active sentences greater than 90 days (i.e., prison sentences).

Although it is not known how many of these convictions involved use of a firearm, Fiscal Research feels this data indicates some offenders are going to receive active sentences for firing into unoccupied property. As a Class I felony, on average each offender would receive an active sentence of 6 months. *If*, for example, there were 100 convictions for the proposed offense per year, approximately 13 offenders would receive an active sentence of about 6 months and would result in 7 additional prison beds the first year. By the second year, a combination of active sentences and probation revocations would result in the need for about 26 additional prison beds.

Because there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, each active sentence would create the need for an additional prison bed and have a fiscal impact on the Department of Correction (DOC). However, because there is no accurate count of the number of offenses for shooting into unoccupied property, there is no estimate available of the fiscal impact on the DOC.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson

DATE: April 4, 2001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 465 A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO DISCHARGE A FIREARM INTO AN UNOCCUPIED BUILDING, VEHICLE, OR OTHER ENCLOSURE.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☒.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

May 15, 2001

The House Committee on Judiciary III met on Tuesday, May 15, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole, J. Crawford, Daughtry, Ellis, Hensley, Holmes, Jarrell, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Tony Rand was called forward to explain SB 346, A BILL TO BE ENTITLED AN ACT AMENDING THE LAW REGARDING THE CRIMINAL OFFENSE OF STALKING AND CERTAIN DOMESTIC CIOLENCE LAWS. Ripley Rand, Assistant District Attorney for Wake County speaks for the bill. Representative Michaux makes a motion to have the PCS before the committee. Motion passes. Representative Michaux moves to adopt an amendment. Motion passes. Anne Winner, NC Coalition Against Domestic Violence speaks for bill. Marcie Holmes speaks for bill. Representative Michaux moves that the amendment be rolled into a Proposed Committee Substitute, to give a favorable report to the PCS and an unfavorable report to the original bill, and that the bill be re-referred to Appropriations. Motion passes.

Senator Tony Rand is recognized to explain SB 833, A BILL TO BE ENTITLED AN ACT TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHIL ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE. Representative Daughtry makes a motion to amend the bill. Motion passes. Representative Ellis moves to roll the amendment into a Proposed Committee Substitute, to give a favorable report to the PCS and to give an unfavorable report to the original bill. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:40 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

May 15, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 346	**AMEND STALKING/DOMESTIC VIOLENCE LAWS** **Senator Tony Rand**
SB 833	**POSSESSING FRAUDULENT ID TO GET LIQUOR** **Senator Tony Rand**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 5-15-01

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ferris Morrison	Governor's Institute on Alcohol &
Anthony McLeod	" Substance Abuse
Stephanie Sidberry	"
Ann Fulton	ABC Comm
Amy Yonowitz	DOJ
[illegible]	NCRA
John Phelps	NCLM
Dean Plunkett	NC Beer & Wine.
[illegible]	DOB
David Huskins	SPEAR'S BBQ & GRILL
[illegible]	NC NPA
[illegible]	NCCADV
[illegible]	[illegible]
Bill Wilson	NCATL
Betty Huskins	Adv. West NC
McCants	AOC
[illegible]	CCPS
Cam Cavea	BPMHC
[illegible]	DOB
[illegible]	DCA
Marcee Lee Holmes	formerly stalked victim
[illegible]	WNC-TV
Alicia Gruenebaum	YAIO
[illegible]	DOJ

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 346

Judiciary I Committee Substitute Adopted 4/25/01

Short Title: Amend Stalking/Domestic Violence Laws.	(Public)
Sponsors:	
Referred to:	

March 6, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW REGARDING THE CRIMINAL OFFENSE OF STALKING AND CERTAIN DOMESTIC VIOLENCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 reads as rewritten:

"**§ 14-277.3. Stalking.**

(a) Offense. – A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence ~~of~~ of, or otherwise harasses, another person without legal purpose and with the intent to ~~cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury.~~ do any of the following:

(1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(b) Classification. – A violation of this section is a Class ~~1~~A1 misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a Class ~~A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I felony.~~ H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

(c) Definition. – For the purposes of this section, the term 'harasses' or 'harassment' means knowing conduct, including written or printed communication or transmission, telephone or cellular or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or

electronic transmissions, directed at a specific person that annoys, torments, terrorizes, or terrifies that person and that serves no legitimate purpose."

SECTION 2. G.S. 15A-534.1(a) reads as rewritten:

"(a) In all cases in which the defendant is charged with assault ~~on or~~ on, communicating a threat ~~to~~ to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply."

SECTION 3. G.S. 50B-1(a) reads as rewritten:

"(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily ~~injury;~~ injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7."

SECTION 4. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective ~~order a misdemeanor.~~ order.**

(a) ~~A~~ Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section, the person shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with or convicted of a Class A or B1 felony or to a person charged under subsection (f) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony."

SECTION 5. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 346
Judiciary I Committee Substitute Adopted 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S346-CSRV-18 [v.3]

5/8/2001 9:41:37 AM

Short Title: Amend Stalking/Domestic Violence Laws. (Public)

Sponsors:

Referred to:

March 6, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW REGARDING THE CRIMINAL OFFENSE OF STALKING AND CERTAIN DOMESTIC VIOLENCE LAWS. .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.3 reads as rewritten:

"**§ 14-277.3. Stalking.**

(a) Offense. – A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence ~~of~~ of, or otherwise harasses, another person without legal purpose and with the intent to ~~cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury.~~ do any of the following:

(1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(b) Classification. – A violation of this section is a Class ~~1~~A1 misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a Class ~~A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I felony.~~ H felony. A person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

(c) Definition. – For the purposes of this section, the term 'harasses' or 'harassment' means knowing conduct, including written or printed communication or transmission, telephone or cellular or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or

electronic transmissions, directed at a specific person that annoys, torments, terrorizes, or terrifies that person and that serves no legitimate purpose."

SECTION 2. G.S. 15A-534.1(a) reads as rewritten:

"(a) In all cases in which the defendant is charged with assault ~~on or~~ on, communicating a threat ~~to~~ to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply."

SECTION 3. G.S. 50B-1(a) reads as rewritten:

"(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily ~~injury;~~ injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7."

SECTION 4. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge ~~within 72 hours of the filing for relief under this subsection, or~~ by the end of the next day on which the district court is in session in the county in which the action was ~~filed, whichever occurs first.~~filed. ~~A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection.~~ Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

SECTION 5. G.S. 50B-4.1 reads as rewritten:

"**§ 50B-4.1. Violation of valid protective ~~order a misdemeanor.~~ order.**

(a) ~~A~~ Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the

National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to a person who is charged with or convicted of a Class A or B1 felony or to a person charged under subsection (f) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony."

SECTION 6. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 346:
Amend Stalking/Domestic Violence Laws

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Rand
Date:	May 2, 2001	**Summary by:**	Dianna Jessup
Version:	PCS S346-CSRV-18[v.3]		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 346 would amend the stalking law to prohibit a broader category of behavior, to increase the criminal penalties for a violation, and to define "harassment." The bill would make other changes to the domestic violence bail and pretrial release statute and increase the punishment for felonies committed after a domestic violence protective order is in place.***

The PCS differs from the second edition in that Section 4 was added, which would amend the statute regarding ex parte orders entered by magistrates in domestic violence cases so that the orders would expire and hearings would be scheduled before a judge by the end of the next day on which the district court is in session.

This bill would become effective December 1, 2001, and apply to offenses committed on or after that date.

CURRENT LAW: **Stalking.** North Carolina's anti-stalking law was first enacted in June 1992. The statute was last amended in 1997, when the offense was raised from a Class 2 to a Class 1 misdemeanor (maximum 120 days' punishment), and the commission of the offense while a court order is in effect prohibiting similar conduct was raised from a Class 1 to a Class A1 misdemeanor (maximum 150 days' punishment).

Currently, a person commits the offense of stalking when the person:

- Willfully and on more than one occasion
- Follows, *or* is in the presence
- Of another person
- Without legal purpose
- With the intent to cause death or bodily injury *or* with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury.

In 1999, the General Assembly expanded the telephone harassment statute to prohibit threatening e-mail communications (G.S. 14-196). Violation of the telephone harassment statute is a Class 2 misdemeanor. Other offenses related to stalking include: communicating threats (G.S. 14-277.1 - Class 1 misdemeanor), domestic criminal trespass (G.S. 14-134.3 - Class 1 misdemeanor), assault on a female (G.S. 14-33(c)(2) - Class A1 misdemeanor), simple assault (G.S. 14-33 - Class 2 misdemeanor)

Domestic Violence: State law permits a person to file a civil action to obtain a protective order or other relief to protect against acts of domestic violence. "Domestic violence" is defined to mean the commission upon an aggrieved party by a person with whom the aggrieved party has or has had a personal relationship of the following acts: attempting to cause or causing bodily injury; placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or rape. Currently, an aggrieved party may seek an ex parte order from an authorized

magistrate. An ex parte order entered by a magistrate expires, and a magistrate must schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first.

BILL ANALYSIS: Section 1 of the bill would amend the stalking statute to broaden the category of behavior prohibited by G.S. 14-277.3 to include harassment and acts designed to place a victim in reasonable fear either for the victim's safety or that of the victim's immediate family or close personal associates. The bill would also prohibit harassment that is intended to cause, and does cause, substantial emotional distress by placing the victim in fear of bodily harm. The terms "harasses" and "harassment" would be added as defined terms and would include most types of communications that annoy, torment, terrorize or terrify a victim.

The bill would also increase the class of the offense of stalking to a Class A1 misdemeanor, punishable by a maximum of 150 days' community/intermediate/active punishment. Where a court order is in effect prohibiting similar behavior, a violator would be punished as a Class H felon (currently, Class A1 misdemeanor), and may be sentenced to a maximum of 30 months. A recidivist would be punished as a Class F felon, with a maximum punishment of 59 months.

Section 2 would amend G.S. 15A-534.1(a) to add to the list of domestic violence crimes drawing special conditions of bail and pretrial release, the following categories of felonies when committed upon a victim group: Rape/Sex Offenses (Article 7A), Assaults (Article 8), Kidnapping/Abduction (Article 10), or Arson (Article 15).

Section 3 would make a conforming change to the domestic violence definition from Chapter 50B. If the bill were enacted, domestic violence would include acts that place a victim group in fear of continued harassment to a level that inflicts substantial emotional distress.

Section 4 would amend the statute governing the expiration of ex parte orders by magistrates in a domestic violence case so that the orders would no longer expire within 72 hours. Instead, the order's expiration and the ex parte hearing before the district court judge would be scheduled for the next day on which the district court is in session. This change would eliminate the need for the aggrieved party to return to court every 72 hours, even if there is not a district court judge available.

Section 5 would expand the punishment for violating a domestic violence protective order (50B order). A person committing felonious acts prohibited by a known existing 50B order would be punished at one higher felony class, unless the felonious act is punishable as a Class A or B1 felony. Any person who knowingly violates a 50B order after having been previously convicted of three Chapter 50 offenses would be guilty of a Class H felony, with a maximum punishment of 30 months.

Al Andrews and Trina Griffin contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE (INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 346 (Second Edition)

SHORT TITLE: Amend Stalking/Domestic Violence Laws

SPONSOR(S): Senator Rand

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available (X)

(In millions)

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
GENERAL FUND					
Correction					
Recurring	$0	$27,173	$55,977	$118,357	$207,319
Judicial					
Jury Fees	$11,352	$22,704	$22,704	$22,704	$22,704
Indigent Defense	$24,990	$54,978	$60,476	$66,523	$73,176
TOTAL EXPENDITURES	$36,342	$104,855	$139,157	$207,584	$303,199

Section 1 (G.S. 14-277.3): For new stalking misdemeanor offenses, impact on county jails is expected but no estimate is available; fiscal impact on Judicial Branch can be absorbed with existing resources. For felony stalking offenses, Judicial Branch is expected to incur costs as shown above; and impact on the Department of Correction is expected but cannot be determined.

Section 2 (G.S. 15A-534.1(a)): Pretrial release conditions are expected to have a fiscal impact on the Judicial Branch, but cannot be estimated.

Section 3 (G.S. 50B-1 (a)): Fiscal impact on the Judicial Branch expected but cannot be estimated.

Section 4 (G.S. 50B-4.1): A fiscal impact is expected on the Judicial Branch and DOC as a result of a new felony offense for repeat violations of protective orders (G.S. 50B-4.1(f)). However, it cannot be estimated at this time.
The enhanced felony class for felonies that violate a protective order (G.S. 50B-4.1(d)) is expected to have a fiscal impact on the Department of Correction as shown above; an impact on the Judicial Branch is expected but not available.

POSITIONS: It is anticipated that approximately 1 position would be needed to supervise the additional inmates housed under this bill by the year 2005-06. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities. For the five-year fiscal note horizon, it is recommended that a ratio of 2.5 inmates to one employee be used for each custody level.

PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: Dept. of Correction: Judicial Branch, County Jails

EFFECTIVE DATE: This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

NOTE: *This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

Section 1 of the proposed bill revises G.S. 14-277.3 by broadening the definition of stalking and enhancing the penalty. Under the bill, a person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of, *or otherwise harasses*, another person, without legal purpose and with the intent to place the person in reasonable fear either for the person's safety or the safety of their immediate family or close personal associates. It further enhances violation of this section to a Class A1 misdemeanor from a Class 1, and to Class H felony from a Class I felony if done when there is a court order in effect prohibiting similar behavior. The bill also provides that a person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony.

Section 2 revises GS 15A-534.1(a) to add that a judge must determine pretrial release conditions in all cases in which the defendant is charged with committing a felony under a variety of specified offenses (including rape and sexual offenses, assault, kidnapping, and arson) upon current or past domestic partners.

Section 3 revises GS 50B-1(a) to include continued harassment that inflicts substantial emotional distress within the definition of domestic violence. Under Section 4, GS 50B-4.1 is amended to provide that a person committing a felony while knowingly violating a valid protective order shall be guilty of a felony one class higher than the principal felony (unless that is a Class A or B1 felony or the multiple offense felony created by this law) and makes fourth offense of violation of a valid protective order a Class H felony.

ASSUMPTIONS AND METHODOLOGY: Department of Correction and the Judicial Branch

Stalking Offenses (Misdemeanor Offenses, G.S. 14-277.3)

The proposed bill expands the scope of the stalking offense to cover harassing conduct and enhances violation of G.S. 14-277.3 to a Class A1 misdemeanor. The bill defines harass or harassment as knowing conduct communicated by any means (written, printed, telephonic, or electronic) directed at a specific person that annoys, torments, terrorizes, or terrifies that person and that serves no legitimate purpose. Consequently, additional charges and jail sentences may result since some people would be charged with the broader stalking offense created by this bill that might not otherwise be charged with any offense under the current law, and offenders currently charged with Class 1 would be upgraded to Class AI

There were 86 Class 1 misdemeanor convictions for stalking and 14 Class A1 misdemeanor convictions for stalking during FY 1999/2000, according to the NC Sentencing Commission. In addition, the Administrative Office of the Courts (AOC) reports that for a similar period (CY 2000) data indicate that 830 defendants were charged with misdemeanor stalking (Class 1 and Class A1 misdemeanors).

While it is not known how many additional sentences will result from broadening the definition of stalking, Fiscal Research does not expect the expansion of scope and reclassification of Class 1 misdemeanor convictions to Class A1 misdemeanor convictions to have an impact on the prison population. However, the reclassification and the expansion of scope could have an impact on local jail populations. In FY 1999/2000, 19% of Class A1 misdemeanor convictions resulted in active sentences. The average sentence length imposed was 69 days. Offenders serving active sentences of 90 days or less are housed in county jails.

AOC cannot provide an estimate on the increase in district court workload that would result from the enhancement of the misdemeanor offenses from Class 1 to Class A1, or from the expansion of scope. But, given the number of offenders currently charged and that any expected increase in Judicial Branch workload is spread statewide, Fiscal Research estimates the impact from this section of the bill can be absorbed with existing resources.

Stalking Offenses (Felony Offenses, G.S. 14-277.3)

The proposed bill enhances violation of this section to a Class H felony from a misdemeanor if done when there is a court order in effect prohibiting similar behavior. The bill also provides that a person who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. Given these penalty upgrades and the expansion of scope, some defendants would face longer sentences, and in some cases, be ineligible for community sanctions. It also can be expected that the defense and prosecution would be more vigorous, resulting in more time and cost to the courts.

During CY 1999/2000 there were 15 defendants charged with felony stalking (Class I), according to the AOC. The Sentencing Commission reports that for a similar period (FY 1999/2000) there were no Class I felony convictions for stalking.

While it cannot be assumed that the 14 Class A1 convictions for stalking in FY 1999/2000 were committed while a court order was in place, the Sentencing Commission can estimate the impact on the prison population under various scenarios. If, for example, there are 15 convictions for stalking with a court order in place that move from Class A1 to Class H, this would result in the need for four additional prison beds the first year and eight additional prison beds the second year.

If there are five convictions for repeated stalking that move from Class I to Class F, this would result in the need for three additional prison beds the first year and five additional prison beds the second year.

While it is not known how many offenders will be sentenced as a result of the penalty enhancements, Fiscal Research assumes there may be an impact on the Department of Correction since there are no surplus prison beds available for the five year Fiscal Note horizon and beyond, and each active sentence would create the need for an additional prison bed.

AOC is unable to provide at this time an estimate on the impact to the court system from the Class F felony enhancement, but has provided analysis on the Class H felony enhancement if done when there is a court order in effect prohibiting similar behavior. Although they do not have data on the exact number of such defendants, they note the percentage could be very high given the very large number of Chapter 50B protective order cases. In calendar year 2000, there 25,766 protective order cases under Chapter 50B. They, therefore, estimate conservatively that a minimum of 7% (between 5% and 10%) of the CY1999/2000 misdemeanor stalking charges, or 58 defendants would be charged under the bill with the Class H felony.

In addition, they estimate that 7% of defendants charged with harassing/threatening telephone calls (Class 2 misdemeanor) and those charged with communicating threats (Class 1 misdemeanor) could be charged under the broad language of the bill. There were 6,154 and 24,097 defendants charged in CY 2000, respectively. Thus, they estimate 430 of the defendants charged with harassing/threatening telephone calls and 1,686 defendants charged with communicating threats would be charged with the Class H felony under the bill, for a total of 2,116 defendants. Added to the 58 defendants, AOC would estimate 2,174 defendants would be charged with felonies under the bill instead of misdemeanor under current law.

Assuming that 2% of these defendants would go to trial, 43 felony trials at 2 days (12 hours) in superior court is estimated. The jury fees associated with the new superior court trials are estimated at $22,704 for the 43 trials ($528 for each 2-day trial).

Along with jury fees, these new superior court trials would be associated with personnel costs and indigent defense costs. However, Fiscal Research does not include personnel costs in its calculation if the workload increase is less than 3,600 (3,600 = 2 fulltime positions). With this particular amendment, workload is only estimated to increase by 1,494 hours.

In addition to those defendants going to trial, AOC estimates that 60%, or 1,304 defendants, would plead guilty. AOC estimates that about 60% of these defendants, or 26 defendants with felony trials and 782 defendants with guilty pleas, would be found indigent and receive court-appointed counsel. For trials, AOC estimates 12 in-court hours and 5 additional hours of preparation time would be need for a total of 17 hours. At a cost of $60 per hour, AOC estimates indigent costs for trials at $26,520 (26 trials x 17 hours x $60). For guilty pleas, AOC expects an additional half hour of preparation time would be needed. At a cost of $60 per hour, AOC estimates indigent costs for guilty pleas at $23,460 (782 pleas x .5 hours x $60). Indigent cost for a full year would total $49,980. AOC, further, estimates that indigency cost would increase by 10% each year, during the five-year Fiscal Note horizon.

Pretrial Release Conditions Under Chapter 50B

This bill amends GS 15A-534.1(a) to add that a judge must determine pretrial release conditions in all cases in which the defendant is charged with committing a felony under Articles 7A (Rape and Other Sex Offenses), 8 (Assaults), 10 (Kidnapping and Abduction), or 15 (Arson and Other Burnings), upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married. Current G.S. 15A-534 provides that a judicial official (not only a judge) must determine pretrial release conditions for a defendant not covered under current G.S. 15A-534.1(a). Thus, magistrates would no longer be able to determine pretrial release conditions for defendants charged with various sex offenses (including rape and sexual offenses, assault, kidnapping, and arson that involve domestic relationships defined under the bill.

AOC cannot provide an estimate on the impact to the court system as a result of this provision. Nevertheless, they note that there are numerous offenses covered under the specified articles to which the bill would apply. For example, one such offense is first-degree and second degree kidnapping, in which AOC data for calendar year 2000 indicates that 1,447 defendants were charged with this offense. Thus, given the number of new offenses to which this provision could apply, Fiscal Research and AOC would anticipate a fiscal impact on the courts.

Expanded Definition of Domestic Violence (G.S. 50B-1(a))

Similar to the expanded scope of stalking offenses under the bill (discussed previously), the bill adds harassing conduct to the definition of domestic violence. The broad definition for harassment can be expected to result in new charges being filed, more protective orders being sought and entered by the court, and thus, additional violations of protective orders. However AOC has no data from which to estimate the extent of this impact on the courts. Given that this change affects the definition of domestic violence for the entire Chapter, Fiscal Research and AOC assumes it could have a very substantial impact on court workload.

New Felony for Repeat Violations of Protective Orders (G.S. 50B-4.1(f))

Fiscal Research anticipates a fiscal impact on the courts and the prison population from this section of the bill. In FY 1999/2000 there were 929 convictions for violation of a protective order, with 331 having three or more prior conviction points. In addition, the AOC data indicate there were 3,274 defendants charged with a misdemeanor violation of a domestic violence protective order under G.S. 50B-4.1. While the AOC database contains information on the number of prior conviction points, it does not contain information about the specific offenses that are used to calculate the number of points. Therefore, it is not known how many offenders have knowingly violated a valid protective order and have previously been convicted of three Chapter 50B offenses.

The Sentencing Commission notes if, for example, there were three convictions that moved from a Class A1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for one prison bed the first year and two prisons beds the second year. If, for example, there were 100 convictions that moved from a Class A1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for 22 prison beds the first year and 50 prison beds the second year.

According to AOC, the number of cases that may result is unknown and there is no estimate available of the fiscal impact on the Judicial Branch. Notwithstanding, Fiscal Research assumes there will be a fiscal impact on the Judicial Branch.

Enhanced Felony Class for Felonies that Violate a Protective Order (G.S. 50B-4.1(d))

As indicated earlier, the section of the bill amends G.S. 50B-4.1 to punish a person who commits any felony at the time the person knows the behavior is prohibited by a valid protective order with a felony one class higher than the principal felony.

AOC is unable to provide an estimate on the Judicial Branch as a result of this provision. Fiscal Research assumes there will be a fiscal impact given the felony enhancement.

During FY 1999/2000 there were 19 felony convictions associated with the violation of a valid protective order. Since the conditions of the protective order are not computerized, it is not known whether all of these convictions would increase one felony offense class as proposed. For purposes of simulation, it was assumed that all 19 felony convictions would increase by one offense class.

The chart below compares the projected inmate population to prison bed capacity and shows whether there is adequate bed capacity for any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five*

year Fiscal Note horizon and beyond. That means the number of beds needed (Row 5) is always equal to the projected additional inmates due to a bill (Row 4).

Rows 4 and 5 in the chart show the impact of this specific Bill. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add 3 inmates to the prison system by the end of FY 2005-06.

	June 30 2002	**June 30 2003**	**June 30 2004**	**June 30 2005**	**June 30 2006**
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	33,141	33,954	34,738	35,682	36,590
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	32,544	32,712	32,712	32,712	32,712
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	*-597*	*-1,242*	*-2,026*	*-2970*	*-3,878*
4. No. of Projected Additional Inmates Due to this Bill[3]	0	1	1	2	3
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill[3]	0	1	1	2	3

OTHER ASSUMPTIONS:

1. The assumptions for number of active sentences and number of probation revocations assume the same percentage as found for Class E offenders in FY 1999/2000. Assumes no changes in judicial or prosecutorial behavior regarding convictions for this offense.
2. Assumes no deterrent effects as a result of the bill.

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[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January, 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rates forecast by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds is based on beds completed or funded and under construction as of 1/11/01. The number of beds assumes the Department of Correction will operate at an Expanded Operating Capacity (EOC), which is the number of beds above 100% or Standard Operating Capacity. The EOC is authorized by previous court consent decrees or departmental policy. ***These bed capacity figures do not include the 3,000 new beds proposed by the Department of Correction for operation in 2003 and 04 nor the potential loss in bed capacity due to any proposals in the 2001 Session to eliminate prison beds or close prisons.***

[3] Criminal Penalty bills effective December 1, 2001 will only affect inmate population for one month -- June of FY 2001-02 – due to lag time between when an offense is committed and an offender is sentenced.

FISCAL IMPACT BEYOND FIVE YEARS -- Fiscal Notes look at the impact of a bill through the year 2006. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	2006-07	2007-08	2008-09	2009-10
Inmates Due to This Bill	4	5	6	7
Available Beds	-4,848	-5,771	-6,688	-7,597
New Beds Needed	4	5	6	7

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

Close Custody – 29%
Medium Custody –44%
Minimum Custody –27%

NOTE: *The Department of Correction indicates that the prison system is under capacity in close custody beds only. However, in assigning the true cost of this bill, the Fiscal Research Division considered the number of beds needed at each custody level due to this bill.*

OPERATING: Operating costs are based on actual 1999-2000 costs for each custody level as provided by the Department of Correction on November 1, 2000. A 3% per year inflationary rate has been added to these 99-2000 costs to determine the five-year recurring costs estimated in the Fiscal Impact Table on Page 1.

DAILY INMATE OPERATING COST 99-2000

Custody Level	Minimum	Medium	Close	Statewide Average
Daily Cost Per Inmate (99-2000)	$52.52	$68.13	$75.32	$63.65

These costs include security, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons.

NOTE: *Operating costs will be calculated as follows: number of offenders times daily cost per inmate for each custody level = total operating costs. For bills that increase inmate population in 2002 or 2003, only operating costs are included in the estimate of fiscal impact. This methodology is based on the following assumption. It is not practical to assume that Correction can build prisons quickly enough to house additional offenders before 2003-04. In practice, DOC will have to purchase additional beds out of state or in county jails or establish temporary beds until construction can be completed. Based on previous contract costs for purchasing beds, the DOC statewide average cost for 99-2000 will be the base cost of buying a prison bed.*

METHODOLOGY FOR CALCULATING PRISON BED COSTS: Sentencing Commission projections and DOC estimates of custody levels and operating costs (illustrated previously) were the basis for calculating the number of beds needed each year. Due to the gap between the time a felony offense is committed and the offender is sentenced, the effective date for prison impact is estimated to be 6/1/2002. Therefore, fiscal impact

for FY 2002 is for the month of June only, or 1/12 of the annual bed operating cost. Fiscal Year 2003 represents the first full year, and in this case the first year in which a prison bed is needed.

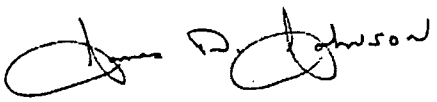
SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction

TECHNICAL CONSIDERATIONS: The bill's change of felony level will require a change in how stalking is cited in the Victim's Rights Act (Article 46 of Chapter 15A) if stalking is still to be covered. The current law defines a *victim* as a person against whom there is probable cause to believe that one of the crimes listed has been committed. Stalking is one of the offenses specifically listed for Class I felony violations. Under the bill, the felony offense of stalking is a Class H or Class F felony and not a Class I felony, as provided under current law. If it is the intent of the General Assembly that stalking continue to be covered under the Victim's Rights Act, then it should amend the specific listing of this section among Class H or Class F felonies pursuant to the change in the bill, instead of a Class I felony.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson



DATE: May 8, 2001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 346 A BILL TO BE ENTITLED AN ACT AMENDING THE LAW REGARDING THE CRIMINAL OFFENSE OF STALKING AND CERTAIN DOMESTIC VIOLENCE LAWS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to House Committee Substitute Bill, unfavorable as to Senate Committee Substitute Bill, and recommendation that the House Committee Substitute Bill be re-referred to the Committee on Appropriations.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 833
Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Possessing False ID to Get Liquor. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-302(e) reads as rewritten:

"(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic ~~beverages~~ beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this ~~section~~ section, by using or attempting to ~~use:~~use any of the following:

(1) A fraudulent or altered ~~driver's license; or~~drivers license.

(2) A fraudulent or altered identification document other than a ~~driver's license; or~~drivers license.

(3) A ~~driver's~~drivers license issued to another ~~person; or~~person.

(4) An identification document other than a ~~driver's~~drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section."

SECTION 2. G. S. 18B-302(f) reads as rewritten:

"(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of ~~his driver's~~the person's drivers license or any other form of identification ~~document~~ of any kind issued or given to the person by any other person who violates or attempts to violate subsection (b) of this section."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 833

Judiciary I Committee Substitute Adopted 4/23/01
House Committee Substitute Favorable 5/17/01
Fourth Edition Engrossed 5/29/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S833-CSSB-58 [v.2]

10/9/2001 10:15:36 AM

Short Title: Possession/Manufacture of Fraudulent IDs. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE, TO MAKE IT ILLEGAL TO POSSESS FRAUDULENT IDENTIFICATION WHILE ATTEMPTING TO ENTER THE PREMISES OF AN ALCOHOL PERMITTEE OR OBTAIN ALCOHOLIC BEVERAGES, AND TO AUTHORIZE THE DRIVERS LICENSE TECHNOLOGY FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of certain fraudulent forms of identification.**

(a) Except as otherwise made unlawful by G.S. 20-30, it shall be unlawful for any person to knowingly possess or manufacture a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

(1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.

(2) A military identification card containing a picture.

(3) A passport.

(4) An alien registration card containing a picture.

(c) A violation of this section shall be punished as a Class 1 misdemeanor."

SECTION 2. G.S. 18B-302(e) reads as rewritten:

"(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic ~~beverages~~ beverages, or to obtain or attempt to obtain permission to purchase alcoholic beverages, in violation of subsection (b) of this ~~section~~ section, by using or attempting to ~~use:~~use any of the following:

(1) A fraudulent or altered ~~driver's license; or~~drivers license.

(2) A fraudulent or altered identification document other than a ~~driver's license; or~~drivers license.

(3) A driver's license issued to another ~~person; or~~person.

(4) An identification document other than a ~~driver's~~ drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section."

SECTION 3. G.S. 18B-302(f) reads as rewritten:

"(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of ~~his driver's~~ the person's drivers license or any other form of identification ~~document~~ of any kind issued or given to the person, by any other person who violates or attempts to violate subsection (b) of this section."

SECTION 4. Article 2 of Chapter 20 is amended by adding the following new sections to read:

"**§ 20-37.01. Drivers license technology fund.**

The Drivers License Technology Fund is established in the Department of Transportation as a nonreverting, interest-bearing special revenue account. The revenue in the Fund at the end of a fiscal year does not revert, and earnings on the Fund shall be credited to the Fund annually. All money collected by the Commissioner pursuant to G.S. 20-37.02 shall be remitted to the State Treasurer and held in the Fund. Money held in the Fund shall be used to supplement funds otherwise available to the Division for information technology and office automation needs. The Commissioner shall report by February 1 and August 1 of each year to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House of Representatives Appropriation Committees, and the chairs of the Senate and House of Representatives Appropriations Subcommittee on Transportation on all money collected and deposited in the Fund and on the proposed expenditure of funds collected during the preceding six months.

"**§ 20-37.02. Verification of drivers license information.**

(a) The Commissioner shall establish and operate an electronic system that can be used to verify drivers licenses and identification cards issued by the Division and the dates of birth on these documents in order to facilitate access to drivers license information by retailers and persons holding ABC permits to prevent the utilization of fictitious identification for the purpose of underage purchases of certain age-restricted products or to commit certain crimes.

(b) The electronic system established and operated by the Commissioner pursuant to subsection (a) of this section shall allow a retailer, as defined in G.S. 105-164.3(14), a person who holds an ABC permit, as defined in G.S. 18B-101(2), or an agent of the retailer or a person holding an ABC permit, to verify the validity of a drivers license or identification card issued by the Division and the date of birth of the person issued the drivers license or identification card. The Commissioner shall make drivers license and identification card information available in a read-only format, and the information to be made available shall not exceed the information contained on the face of the drivers license. The Division shall not keep a record of the inquiry. The retailer or a person holding an ABC permit may retain such information as is necessary to provide evidence that the person's drivers license or identification card was validated or that the person's age was verified. A retailer or permittee shall agree to comply with the requirements of this section prior to using the system.

(c) Except for purposes allowed in this section, a person using the electronic system established in accordance with subsection (a) of this section shall not collect or retain any information obtained through the use of the electronic system, nor transfer or make accessible to a third party any information obtained through an inquiry permitted under this section. A violation of the provisions of this subsection shall be punished as a Class 2 misdemeanor.

(d) A retailer or permittee using the electronic system established pursuant to this section shall be responsible for the costs of the equipment and communication lines approved by the Division needed by the retailer or permittee to access the system.

(e) The establishment and operation of an electronic system pursuant to this section may be funded through grants received from the State, the federal government, a private entity, or any other funding source made available to the Drivers License Technology Fund. The Commissioner may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to meet the purpose of this section. Costs recovered pursuant to this subsection and all other funds obtained through grants to the Fund shall be remitted to the State Treasurer to be held in the Drivers License Technology Fund established in G.S. 20-37.01."

SECTION 5. G.S. 20-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. – If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS

THE PURCHASE OF TOBACCO PRODUCTS

BY PERSONS UNDER THE AGE OF 18.

PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars ($25.00) for the first offense and seventy-five dollars ($75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, or that the defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

SECTION 6. The electronic system to be established pursuant to Section 4 of this act shall not be operated by the Commissioner until such time as the Drivers License Technology Fund contains sufficient funds to meet the purposes of Section 4 of this act and only for so long as adequate funds are available to operate the electronic system. Sections 1 through 3 of this act become effective December 1, 2001, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 833:
Possession/Manufacture of Fraudulent IDs.

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Sen. Rand
Date:	October 9, 2001	**Summary by:**	O. Walker Reagan, Staff Attorney
Version:	Proposed Committee Substitute S833-CSSB-58[V.1]		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 833 would create the Class 1 misdemeanor offense of manufacturing or possessing certain false or fraudulent identification. The bill would amend the underage drinking laws to also make it a crime to use fraudulent identification to enter a place that serves alcoholic beverages or to obtain permission to purchase alcoholic beverages, and to use forms or means of identification that give the impression that the person is entitled to purchase alcoholic beverages. Also the bill would create the Drivers License Technology Fund to establish a DMV electronic interactive drivers license verification system for use by retail merchants and ABC permit holders.***

CURRENT LAW: Under G.S. 20-30, it is currently unlawful for a person to display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been altered. Violation is a Class 2 misdemeanor. It is also unlawful to sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit; violation is a Class I felony. It is also a Class I felony to present, display, or use a driver license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony.

G.S. 18B-302(e) makes it unlawful for any person under the age of 21 to obtain or attempt to obtain alcoholic beverages by using or attempting to use (1) A fraudulent or altered driver's license; (2) A fraudulent or altered identification document other than a driver's license; (3) A driver's license issued to another person; or (4) An identification document other than a driver's license issued to another person. Under G.S. 18B-302(f), it is also unlawful for any person to permit the use of his drivers license or other ID by a person under the age of 21 in obtaining or attempting to obtain alcoholic beverages. Violation of either of the existing provisions is a Class 1 misdemeanor.

BILL ANALYSIS: ***Section 1*** of the bill creates a new criminal offense of possession or manufacture of fraudulent forms of identification. The bill makes it a Class 1 misdemeanor to "knowing" possess or manufacture a false or fraudulent form of identification for the purpose of deception, fraud or other criminal conduct. The bill specifically applies to certain forms of identification including a picture: State, local, federal, or other state government issued IDs, military IDs, passports, or alien registration cards.

Section 2 of the bill would make it a crime for a person under age 21 to use fraudulent identification to enter into premises that serve alcoholic beverages or to obtain permission to purchase alcoholic beverages. This includes drivers licenses or any other form or means of identification that indicate that a person is not prohibited from purchasing alcoholic beverages. This change is proposed because many establishments that serve alcoholic beverages are screening for underage persons at the entrance to the establishment to avoid the necessity for those actually serving alcoholic beverages from having to require identification. Other establishments are using a single age-identification checkpoint and issuing a form of identification to indicate that the person is old enough to purchase alcoholic beverages, such as wristbands. While the current law covers the use of false identification to purchase alcohol, it does not cover the use of false identification to gain entrance to establishments that serve alcohol. The

law does not currently cover situations where an underage person obtains identification that indicates they can legally purchase alcohol, but that is not false identification or the identification of another. Violation would be a Class 1 misdemeanor. (Under G.S. 18B-102, unless a different punishment is otherwise expressly stated, all violations of the State's alcohol laws are Class 1 misdemeanors.)

Section 3 of the bill would expand the prohibition against a person allowing another to use his or her identification for the purpose of purchasing alcoholic beverages illegally, by including forms of identification other than drivers licenses.

Section 4 enacts two new sections to the DMV laws.

G.S. 20-37.01 establishes the Drivers License Technology Fund that will be used to fund information technology and office automation needs of the Division of Motor Vehicles. The fund is created as a nonreverting, interest-bearing account.

G.S. 20-37.02 authorizes the Commissioner of DMV to establish an electronic system to allow retail merchants and ABC permittees to access the DMV drivers license records for the sole purpose of verifying the valid of the drivers license or identification card and the age of the person to whom the license or card is issued. The information to be made available shall be in a "read-only" form and shall be limited to the information contained on the face of the license. The Division is to keep no record of the inquiry but the requester is permitted to keep information necessary to verify the identification was validated. The information obtained by the retailer or permittee may only be used for verification purpose and no other purpose, and, except as otherwise permitted, may not be retained. The unlawful use or disclosure of the DMV information is punished as a Class 2 misdemeanor.

The person utilizing the electronic system is responsible for the cost to connect and retrieve the information. The funding for this program may be from State, federal or private funds.

Section 5 makes a conforming change to the law prohibiting the sale or distribution of tobacco products to person under the age of 18. This change will allow a merchant to rely on the electronic verification of a drivers license through the system established in Section 4 of the bill as a defense to a charge of sale of tobacco to an underage person.

EFFECTIVE DATE: Sections 1 through 3 of the bill become effective December 1, 2001 and apply to offenses committed on or after that date. The authorization to create the electronic system established in Section 4 is effective when the act becomes law but will only be implemented when sufficient funds are available in the Drivers License Technology Fund and only for so long as sufficient funds are available. Section 5 is also effective when the bill becomes law.

This summary was substantially contributed to by Brenda Carter, Counsel to the House Judiciary III Committee.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S.B. 833 A BILL TO BE ENTITLED AN ACT TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill, ☒ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

June 5, 2001

The House Committee on Judiciary III met on Tuesday, June 5, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, J. Crawford, M. Crawford, Ellis, Fox, Hensley, Holmes, Jarrell, Kiser, and Russell. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Tony Rand is recognized to discuss SB 833, A BILL TO BE ENTITLED AN ACT TO MAKE IT ILLEGAL TO POSSES ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE. NCSU Chief Tom Younce, NCCU Chief McDonald Vick, Duke Chief Clarence Birkhead, and Garner Chief Tom Moss all speak for the bill. Charles Wilkins representing the NC Association Chiefs of Police speaks for bill. Barbara Alvarez-Martin, Governor's Council on Underage Drinking speaks for the bill. No vote is taken.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

June 5, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 833 **POSSESSING FRAUDULENT ID TO GET LIQUOR**
Senator Tony Rand

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 6/5/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TOM MOSS	GARNER POLICE DEPARTMENT
Tom Younce	NC STATE Police Department
Clarence F. Birkhead	Duke Univ. Police
[illegible]	BPOPG
Joel Keith	WAKE COUNTY ABC Law Enforcement
Ogn Fulton	ABC Commission
Rev. MARK CREECH	C.A.L.
John Phelps	NCLM
Harriett Sutherland	Students Against Destructive Decisions
Katie Simmons	Office of the Governor
Joseph Reynolds	NC Gov's Institute on Alcohol + SA
Charles Wilkins	NC Assoc. Chiefs of Police
McDonald Vick	NCCU Police Department
Bill Wilson	NC Academy of Trial Lawyers
Barbara Martin	NC Initiative to Reduce Underage Drinking

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 833

Judiciary I Committee Substitute Adopted 4/23/01
House Committee Substitute Favorable 5/17/01
Fourth Edition Engrossed 5/29/01

Short Title: Possessing False ID to Get Liquor. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE AND TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of fraudulent forms of identification.**

(a) If any person shall knowingly and designedly possess or manufacture a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section, a 'form of identification' shall include all of the following or any replica thereof:

(1) An operator's, chauffeur's, commercial driver's, or similar type of drivers license containing a picture, issued by the Division of Motor Vehicles or an equivalent agency in any state.

(2) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina or any other state.

(3) A military identification card containing a picture.

(4) A passport.

(5) An alien registration card containing a picture."

SECTION 2. G.S. 18B-302(e) reads as rewritten:

"(e) Fraudulent Use of Identification. – It shall be unlawful for any person to enter or attempt to enter a place where alcoholic beverages are sold or consumed, or to obtain or attempt to obtain alcoholic ~~beverages~~ beverages, or to obtain or attempt to obtain

permission to purchase alcoholic beverages, in violation of subsection (b) of this ~~section~~ section, by using or attempting to ~~use:~~ use any of the following:

(1) A fraudulent or altered ~~driver's license; or~~ drivers license.

(2) A fraudulent or altered identification document other than a ~~driver's license; or~~ drivers license.

(3) A ~~driver's~~ drivers license issued to another ~~person; or~~ person.

(4) An identification document other than a ~~driver's~~ drivers license issued to another person.

(5) Any other form or means of identification that indicates or symbolizes that the person is not prohibited from purchasing or possessing alcoholic beverages under this section."

SECTION 3. G. S. 18B-302(f) reads as rewritten:

"(f) Allowing Use of Identification. – It shall be unlawful for any person to permit the use of ~~his driver's~~ the person's drivers license or any other form of identification ~~document~~ of any kind issued or given to that person, by any other person who violates or attempts to violate subsection (b) of this section."

SECTION 4. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 833:
Possessing False ID to Get Liquor

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Rand
Date:	June 5, 2001	**Summary by:**	Brenda J. Carter
Version:	4th Edition		Committee Counsel

SUMMARY: ***Senate Bill 833 would create the Class 1 misdemeanor offense of manufacturing or possessing false or fraudulent identification. In addition, the bill would amend the underage drinking laws to also make it a crime to use fraudulent identification to enter a place that serves alcoholic beverages or to obtain permission to purchase alcoholic beverages, and to use forms or means of identification that give the impression that the person is entitled to purchase alcoholic beverages.***

CURRENT LAW: Under G.S. 20-30, it is currently unlawful for a person to display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been altered. Violation is a Class 2 misdemeanor. It is also unlawful to sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit; violation is a Class I felony. It is also a Class I felony to present, display, or use a driver license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony.

Under G.S. 18B-302, it is currently unlawful for a person less than 21 years old to:

- Purchase, to attempt to purchase, or to possess malt beverages or unfortified wine. *G.S. 18B-302(b)(1)*
  - **Punishment:** Violation is a Class 1 misdemeanor; however if the person is 19 or 20 years old, violation is a Class 3 misdemeanor.
  - **Expunction:** Under 15A-145, whenever a person under the age of 21 years pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to *G.S. 18B-302(b)(1)*, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. This provision is applicable if the person has not previously been convicted of any felony, or misdemeanor other than a traffic violation.

- Purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages. *G.S. 18B-302(b)(2)*
  - **Punishment:** Violation is a Class 1 misdemeanor.

- Aid or abet another in violation of laws prohibiting the sale, purchase or possession of alcohol by underage persons. *G.S. 18B-302(c)(1)*
  - **Punishment:** Violation by an underaged person is a Class 2 misdemeanor

- Obtain or attempt to obtain alcoholic beverages in violation of the above restrictions by using or attempting to use fraudulent identification or identification issued to another person. *G.S. 18B-302(e)*
  - **Punishment:** Violation is a Class 1 misdemeanor

Revocation of Drivers License: A person's drivers license will be revoked if he or she is convicted of any of the above alcohol-related offenses.

BILL ANALYSIS:

--Section 1 of the bill amends Chapter 14 of the General Statutes to create a new criminal offense of possession or manufacture of fraudulent forms of identification.

Section 1 of the bill makes it a Class 1 misdemeanor to *"knowing and designedly"* possess or manufacture a false or fraudulent form of identification. The bill specifically applies to certain forms of picture identification: drivers licenses, State or local government issued IDs, military IDs, passports, alien registration cards.

The phrase "knowing and designedly" is currently used in the statute dealing with obtaining property by false pretenses. "The word "knowingly" is generally interpreted to mean that a person is aware of conscious of what he or she is doing. Thus the person is aware of what he or she is doing, and purposely commits the act in violation of the law.

--Sections 2 and 3 of the bill attempt to close underage drinking law loopholes.

Section 2 of the bill would make it a crime to use fraudulent identification to enter into premises that serve alcoholic beverages or to obtain permission to purchase alcoholic beverages. This includes drivers licenses or any other form or means of identification that indicate that a person is not prohibited from purchasing alcoholic beverages. This change is proposed because many establishments that serve alcoholic beverages are screening for underage persons at the entrance to the establishment to avoid the necessity for those actually serving alcoholic beverages from having to require identification. Other establishments are using a single age identification checkpoint and issuing a form of identification to indicate that the person is old enough to purchase alcoholic beverages, such as wristbands. While the current law covers the use of false identification to purchase alcohol, it does not cover the use of false identification to gain entrance to establishments that serve alcohol. The law does not currently cover situations where an underage person obtains identification that indicates they can legally purchase alcohol, but that is not false identification or the identification of another. Violation would be a Class 1 misdemeanor. (Under G.S. 18B-102, unless a different punishment is otherwise expressly stated, all violations of the State's alcohol laws are Class 1 misdemeanors.)

Section 3 of the bill would expand the prohibition against a person allowing another to use his or her identification for the purpose of purchasing alcoholic beverages illegally, by including forms of identification other than drivers licenses.

EFFECTIVE DATE: The bill becomes effective December 1, 2001 and applies to offenses committed on or after that date.

The fiscal note for the 3rd edition of this bill indicates that although there is no estimate available on the fiscal impact of this bill, it may have some impact on local jail populations.

§ 20-30. Violations of license or learner's permit provisions.

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony.

(1935, c. 52, s. 24; 1951, c. 542, s. 4; 1967, c. 1098, s. 1; 1973, c. 18, s. 2; 1975, c. 716, s. 5; 1979, c. 415; c. 667, ss. 27, 41; 1979, 2nd Sess., c. 1316, s. 22; 1989, c. 771, s. 8; 1991, c. 726, s. 13; 1991 (Reg. Sess., 1992), c. 1007, s. 29; 1993, c. 539, s. 1247; 1994, Ex. Sess., c. 24, s. 14(c);

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 833

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S833-ARV-17 [v.1]

(2) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina.
(3) A military identification card containing a picture.
(4) A passport.
(5) An alien registration card containing a picture." ;

and by renumbering the remaining sections of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 833

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S833-ARV-17 [v.1]

Date _____,2001

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Representative _____

moves to amend the bill on page 1, line 2,
by rewriting that line to read:
" AN ACT TO MAKE POSSESSION OR MANUFACTURE OF FRAUDULENT FORMS OF IDENTIFICATION AN OFFENSE AND TO MAKE IT ILLEGAL TO POSSESS ANY FORM OF FALSE" ;

and on page 1, lines 5 and 6, by inserting between those lines the following:

"**SECTION 1.** Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-100.1. Possession or manufacture of fraudulent forms of identification.**

(a) If any person shall knowingly and designedly possess a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(b) If any person shall knowingly and designedly manufacture a false or fraudulent form of identification, that person shall be guilty of a Class 1 misdemeanor.

(c) For purposes of this section a "form of identification" shall include all of the following:

(1) An operator's, chauffeur's, commercial driver's, or similar type of drivers license containing a picture, issued by the Division of Motor Vehicles or an equivalent agency in any state.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

June 12, 2001

The House Committee on Judiciary III met on Tuesday, June 12, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Daughtry, Ellis, Esposito, Hensley, Jarrell, Kiser, and Russell. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Tony Rand is recognized to discuss SB 833, A BILL TO BE ENTITLED AN ACT TO MAKE IT ILLEGAL TO POSSES ANY FORM OF FALSE IDENTIFICATION WHILE ATTEMPTING TO OBTAIN ALCOHOLIC BEVERAGES WHEN UNDERAGE. Representative Mark Crawford moves to have the PCS before the committee. Motion passes. Ann Fulton, General Council, NC ABC Board speaks for bill. Representative Ellis proposes amendment. Amendment is adopted.. No vote is taken.

There being no further business, the Chair adjourned the meeting at 12:35 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

June 12, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 833 **POSSESSING FRAUDULENT ID TO GET LIQUOR**
Senator Tony Rand

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 6/12/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Simons	Office of Gov. (Intern)
W. H. Pollitt	Gov. Office
Michelle Frazier	NC Bar Assoc.
Ann Fulton	ABC Commission
Michelle Cotton	DMH/DD/SAS
Tom Younce	NC State University Police Dept
TOM MOSS.	GARNER POLICE DEPT.
Floyd W. Jone	Youth Advocacy and Involvement office
Steve Smith	Richmond Community College, Hamlet, NC
Cam Coven	BPM I+L
Andrew Hainsworth	Intern UNCA Rep Luebke
Jack Cozart	Parker Poe
Suzy Blum	Inst. of Gov't Summer Law Clerk
Jennifer Bruno	Inst. of Gov't Summer Law Clerk
John Bolick	
Martha Lidman	Teacher Lincoln Co
Karen Bolick	" " "

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

June 19, 2001

The House Committee on Judiciary III met on Tuesday, June 19, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Ellis, Fox, Hensley, Holmes, Kiser, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Oscar Harris is recognized to present SB 1081, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES. Eddie Caldwell, NC Sheriff's Association, Sherry Melton, SEANC, and Ardis Watkins, SEANC speak for the bill. Representative Ellis moves to amend. Amendment passes. Representative Mark Crawford moves to amend. Amendment passes. No vote is taken on the bill.

There being no further business, the Chair adjourned the meeting at 12:45 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

June 19, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 1081 **MALICIOUS CONDUCT BY PRISONER**
Senator Oscar Harris

ADJOURNMENT

VISITOR REGISTRATION SHEET

JUDICIARY III — 6-19-01
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sherry Melton	SEANC
Ardis Watkins	SEANC
John Ottale	intern - gov office
John Phelps	NCLM
Katie Simmons	Intern - gov office
Harriett Southerland	Youth Advocacy Office
Charles Wilkins	NC Assoc. Chiefs of Police
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Officers
Jay Chaudhuri	DOT
Will Pulls	Gov. Office
Matt Willoughby	NCAN
Sue-Ann Cole	NC AgriBusiness Council
BRIAN Scebold	NC Small Grain Growers ASSN.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1081

Short Title:	Malicious Conduct by Prisoner.	(Public)
Sponsors:	Senator Harris.	
Referred to:	Judiciary I.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-258.4. Malicious conduct by prisoner.**

(a) Any prisoner in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, including persons in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, pending trial or appellate review or for presentence diagnostic evaluation, or any prisoner in the custody of any local confinement facility (as defined in G.S. 153A-217 or G.S. 153A-230.1), or any person in the custody of any local confinement facility (as defined in G.S. 153A-217) pending trial or appellate review or for any lawful purpose, who knowingly and willfully throws, emits, or causes to be thrown, bodily fluids upon a person who is employed at a correction, youth, or detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties is guilty of a Class A1 misdemeanor.

(b) The provisions of this section apply to: (i) violations committed by any prisoner in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, whether inside or outside of the facilities of the North Carolina Department of Correction or the Department of Juvenile Justice and Delinquency Prevention; and (ii) violations committed by any prisoner or by any other person lawfully under the custody of any local confinement facility (as defined in G.S. 153A-217 or G.S. 153A-230.1), whether inside or outside the local confinement facilities (as defined in G.S. 153A-217 or G.S. 153A-230.1)."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 1081:
Malicious Conduct by Prisoner.

BILL ANALYSIS

Committee:	Judiciary III	**Introduced by:**	Senator Harris
Date:	July 10, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (S1081-CSRO-27[v.1])		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1081 would create a new criminal offense for prisoners who throw bodily fluids or excrement at an employee of a detention facility while the employee is in the performance of the employee's duties. This new offense would be punishable as a Class F felony.***

CURRENT LAW:

G.S. 14-33(c)(4) provides that a person is guilty of a Class A1 misdemeanor if the person commits any assault against an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties.

There is no statutory definition of assault in North Carolina and the crime of assault is governed by common law rules. Under common law, the word "assault" has been defined as ***an overt act or attempt with force and violence, to do some immediate physical injury to the person of another, which show of force or violence must be sufficient to put a person of reasonable firmness in fear of immediate physical injury.***

In addition, G.S. 14-34.7(b) provides that anyone who assaults an employee of a State or local detention facility while the employee is in the performance of his or her duties and inflicts serious bodily injury on the employee is guilty of a Class F felony, unless the person's conduct is covered under some other provision of law providing greater punishment.

BILL ANALYSIS:

The Proposed Committee Substitute for Senate Bill 1081 would create a new offense for persons who are in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or any local confinement facility, and who knowingly and willfully throws, emits, or causes to be used as a projectile bodily fluids or excrement on an employee of the facility while the employee is in the performance of his or her duties. This section would apply to violations that occur both inside and outside of the facility.

Violation of this section would be punishable as a Class F felony, which has a presumptive minimum sentence of 13-16 months intermediate/active punishment.

This act would become effective December 1, 2001, and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1081
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1081-CSRO-27 [v.1]

6/19/2001 4:23:07 PM

Short Title: Malicious Conduct by Prisoner. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS OR EXCREMENT AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-258.4. Malicious conduct by prisoner.**

(a) Any prisoner in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, including persons in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, pending trial or appellate review or for presentence diagnostic evaluation, or any prisoner in the custody of any law enforcement officer or local confinement facility (as defined in G.S. 153A-217 or G.S. 153A-230.1), or any person in the custody of any local confinement facility (as defined in G.S. 153A-217) pending trial or appellate review or for any lawful purpose, who knowingly and willfully throws, emits, or causes to be used as a projectile, bodily fluids or excrement at a person who is employed at a correction, youth, or detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties is guilty of a Class F felony.

(b) The provisions of this section apply to: (i) violations committed by any prisoner in the custody of the Department of Correction or the Department of Juvenile Justice and Delinquency Prevention, whether inside or outside of the facilities of the North Carolina Department of Correction or the Department of Juvenile Justice and Delinquency Prevention; and (ii) violations committed by any prisoner or by any other person lawfully under the custody of any local confinement facility (as defined in G.S. 153A-217 or G.S. 153A-230.1), whether inside or outside the local confinement facilities (as defined in G.S. 153A-217 or G.S. 153A-230.1)."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1081
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1081-CSRO-27 [v.1]
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1081-CSRO-31 [v.1]
PROPOSED HOUSE COMMITTEE SUBSTITUTE S108

7/17/2001 10:54:59 AM

Short Title: Malicious Conduct by Prisoner. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS OR EXCREMENT AT A STATE OR LOCAL GOVERNMENT EMPLOYEE WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 33 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-258.4. Malicious conduct by prisoner.**

(a) Any person in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, any law enforcement officer, or any local confinement facility (as defined in G.S. 153A-217, or G.S. 153A-230.1), including persons pending trial, appellate review, or presentence diagnostic evaluation, who knows that the person has been diagnosed with a life threatening communicable disease and who knowingly and willfully throws, emits, or causes to be used as a projectile, bodily fluids or excrement at a person who is an employee of the State or a local government while the employee is in the performance of the employee's duties is guilty of a Class F felony. The provisions of this section apply to violations committed inside or outside of the prison, jail, detention center or other confinement facility."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

ELLIS

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1081 (Second Edition PCS)

SHORT TITLE: Malicious Conduct by Prisoner

SPONSOR(S): Senator Harris

FISCAL IMPACT

Yes () **No ()** **No Estimate Available (X)**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES	(NO ESTIMATE AVAILABLE BUT ASSUME FISCAL IMPACT LIKELY)				
POSITIONS:	0				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Dept. of Correction, and Department of Juvenile Justice & Delinquency Prevention

EFFECTIVE DATE: This act becomes effective Dec 1, 2001, and applies to offenses committed on or after that date.

BILL SUMMARY:

This bill enacts new G.S. 14-258.4 making it a Class F felony for any prisoner in the custody of the Department of Correction or the Department of Juvenile Justice, or any local confinement facility (as defined in GS 153A-217), pending trial, appellate review, or pre-sentence diagnostic evaluation, or any prisoner in the custody of any law enforcement officer for any lawful purpose, to knowingly and willfully throw, emit, or cause to be thrown, bodily fluids or excrement upon an employee who is in the performance of his/her duties.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction (DOC)

This bill covers conduct that is currently not a criminal offense, therefore it is unknown how many offenders might be sentenced under this bill. The conduct proscribed is typically dealt with by internal procedures or with assault charges. Any active sentence as a result of this bill would create the need for an additional prison bed and would have a fiscal impact on the Department of Correction because there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.

In FY 1999/2000, there were 7 convictions for assault resulting in serious injury on a law enforcement officer, probation officer, parole officer, or on a person employed at a State or

local detention facility, which is a Class F felony. Additionally, there were 1,848 convictions for assault on an officer or employee of the state, which is a Class A1 misdemeanor. The Sentencing Commission estimates that if there were two convictions for the proposed Class F offense per year, this would likely result in the need for one additional prison bed the first year and two additional prison beds the second year. If, for example, there were 10- convictions for the proposed offense per year, this would likely result in the need for 5 additional prison beds the first year and 9 additional prison beds the second year.

Judicial Branch

AOC assumes that should there be a desire to file charges for conduct proscribed by this bill, misdemeanor assault could be charged under current law. Current G.S. 14-33(c)(4) makes it a Class A1 misdemeanor, to assault an officer or employee of the State or any political subdivision. Assaults in general under G.S. 14-33 are Class 2 or Class 1 misdemeanors. Therefore, given the enhancement in punishment to a Class F felony, the proposed bill could invite a number of new charges and possibly have a significant fiscal impact on the courts.

According to AOC, data is unavailable to estimate the number of new or enhanced criminal charges as a result of this bill, or the impact on the court system.

Department of Juvenile Justice and Delinquency Prevention (DJJDP)

Per a discussion with DJJDP, they confirmed that these incidents occur frequently, but that they currently charge the prisoner with assault or handle with internal procedures.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Juvenile Justice and Delinquency Prevention (DJJDP)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson

DATE: June 25, 2001

SENATE BILL 1081:
Malicious Conduct by Prisoner.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Sen. Harris
Date:	June 19, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1081 would create a new criminal offense for prisoners who throw bodily fluids at an employee of a detention facility while the employee is in the performance of the employee's duties. This new offense would be punishable as a Class A1 misdemeanor.***

CURRENT LAW:

G.S. 14-33(c)(4) provides that a person is guilty of a Class A1 misdemeanor if the person commits any assault against an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties.

There is no statutory definition of assault in North Carolina and the crime of assault is governed by common law rules. Under common law, the word "assault" has been defined as ***an overt act or attempt with force and violence, to do some immediate physical injury to the person of another, which show of force or violence must be sufficient to put a person of reasonable firmness in fear of immediate physical injury.***

BILL ANALYSIS:

Senate Bill 1081 would create a new offense for persons who are in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or any local confinement facility, and who knowingly and willfully throws, emits, or causes to be thrown bodily fluids on an employee of the facility while the employee is in the performance of his or her duties. This section would apply to violations that occur both inside and outside of the facility.

Violation of this section is punishable as a Class A1 misdemeanor, which has a presumptive minimum sentence of 1 – 60 days community/intermediate/active punishment.

This act would become effective December 1, 2001, and apply to offenses committed on or after that date.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 3, 2001

The House Committee on Judiciary III met on Tuesday, July 3, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Capps, Cole, M. Crawford, Daughtry, Ellis, Fox, Hensley, Jarrell, Kiser, Russell, and Weatherly. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator David Hoyle is recognized to explain SB 649, A BILL TO BE ENTITLED AN ACT TO REQUIRE CONSPICUOUS DISCLOSURE OF MOTOR VEHICLE DEALER ADMINISTRATIVE FEES AND FINANCE YIELD CHARGES AND TO INCREASE DEALER SURETY BOND PROTECTION. Bob Glaser and San Johnson, NCADA, speaks for the bill. Representative Michaux makes a motion to give the bill a favorable report. Representative Cole asks to be removed from voting. The motion passes.

Representative Don Davis is recognized to explain HB 1134, A BILL TO BE ENTITLED AN ACT TO PUNISH STUDENTS WHO CONSPIRE OR THREATEN TO CAUSE VIOLENCE AT SCHOOL, TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, AND TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE.
Representative Hensley offers the sub-committee report. Representative Mark Crawford moves to have the draft PCS from the sub-committee before the full committee. Motion passes. No vote was taken on bill.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 3, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 649	**MV DEALER DISCLOSURE OF CERTAIN FEES** **Senator David Hoyle**
HB 1134	**DISCIPLINARY ACTION/THREATS OF SCHOOL VIOLENCE** **Representative Don Davis**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

7/3/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT GLASER	NCADA
David Farris	" "
TOMMY HARRELSON	" "
HAROLD H. Webb	" "
SAM JOHNSON	ATTY
BILL SCOGGIN	KENNEDY/CARLTON

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 649

Short Title:	MV Dealer Disclosure of Certain Fees.	(Public)
Sponsors:	Senators Hoyle, Plyler, Dalton, and Carter.	
Referred to:	Commerce.	

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CONSPICUOUS DISCLOSURE OF MOTOR VEHICLE DEALER ADMINISTRATIVE FEES AND FINANCE YIELD CHARGES AND TO INCREASE DEALER SURETY BOND PROTECTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-101.1. Conspicuous disclosure of dealer administrative fees.**

(a) No motor vehicle dealer may charge an administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle, whether or not that fee relates to costs or charges which the dealer is required to pay to third parties or is attributable to the dealer's internal overhead or profit, unless the dealer complies with all of the following requirements:

(1) The dealer shall post a conspicuous notice in the sales or finance area of the dealership at least 24 inches on each side informing customers that a fee regulated by this section may or will be charged and the amount of the fee.

(2) The fact that the dealer charges a fee regulated by this section and the amount of the fee shall be disclosed whenever the dealer engages in the price advertising of vehicles.

(3) The amount of a fee regulated by this section shall be separately identified on the customer's buyer's order, purchase order, or bill of sale.

(b) Nothing contained in this section or elsewhere under the law of this State shall be deemed to prohibit a dealer from, in the dealer's discretion, deciding not to charge an administrative, origination, documentary, procurement, or other similar administrative fee or reducing the amount of the fee in certain cases, as the dealer may deem appropriate.

(c) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch to prevent, attempt to prevent, prohibit, coerce, or attempt to coerce, any new motor vehicle dealer located in this State from charging any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle. It shall further be unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch, notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent or prohibit any new motor vehicle dealer in this State from participating in any program relating to the sale of motor vehicles or reduce the amount of compensation to be paid to any dealer in this State, based upon the dealer's willingness to refrain from charging or reduce the amount of any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-101.2. Conspicuous disclosure of dealer finance yield charges.**

(a) No motor vehicle dealer may charge a fee or receive a commission or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, unless the dealer complies with both of the following requirements:

(1) The dealer shall post a conspicuous notice in the sales or finance area of the dealership at least 24 inches on each side informing customers that the dealer may receive a fee, commission, or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, for which the customer may be responsible.

(2) The dealer shall disclose conspicuously on the purchase order or buyer's order, or on a separate form provided to the purchaser at or prior to the closing on the sale of the vehicle, that the dealer may receive a fee, commission, or other compensation for providing, procuring, or arranging financing for the retail purchase or lease of a motor vehicle, for which the customer may be responsible.

(b) Nothing contained in this section or elsewhere under the law of this State shall be deemed to require that a motor vehicle dealer disclose to any actual or potential purchaser the dealer's contractual arrangements with any finance company, bank, leasing company, or other lender or financial institution, or the amount of markup, profit, or compensation which the dealer will receive in any particular transaction or series of transactions from the charging of such fees."

SECTION 3. Nothing contained in Section 1 or 2 above or elsewhere under the law of this State shall be deemed as imposing any civil or criminal liability on motor vehicle dealers located in this State for failure to disclose any of the information required to be in Sections 1 and 2 above prior to the effective date of this act.

SECTION 4. G.S. 20-288(e) reads as rewritten:

"(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) for one established salesroom of the applicant and ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) for one place of business of the applicant and ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor ~~vehicle~~ vehicle, including a motor vehicle dealer, who shall have suffered any loss or damage by the failure of any license holder subject to this subsection to deliver free and clear title to any vehicle purchased from a license holder or any other act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 of this Chapter shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. ~~Such~~ That cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or a fixed value equivalent ~~thereof,~~ pursuant to G.S. 143-143.12."

SECTION 5. Sections 1, 2, and 3 of this act become effective October 1, 2001. Section 4 of this act is effective when it becomes law.

SB 649:
MV Dealer Disclosure of Certain Fees.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Hoyle
Date:	June 26, 2001	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

Summary: *Senate Bill 649 amends the motor vehicles law to require conspicuous disclosure of motor vehicle dealer administrative fees and finance yield charges and to increase the surety bond requirement for license applicants under the MV Dealer's and Manufacturer's Licensing Law.*

BILL ANALYSIS:

Disclosure Requirements.

- **Administrative Fees.** ***Section 1*** of the bill requires motor vehicle dealers to disclose administrative fees, such as origination fees, associated with the sale or lease of a vehicle. The administrative fee must be disclosed on a sign in the sales area of the dealership, disclosed in any price advertising of vehicles, and separately identified on a bill of sale. The bill also prohibits motor vehicle manufacturers from preventing dealers from charging administrative fees.
- **Financing Fees/Commission.** ***Section 2*** of the bill requires that dealers must also disclose that they receive fees or commissions for providing or procuring financing for the purchase or lease of a vehicle. The fact that a dealer may receive a fee/commission from the loan arrangement must be disclosed on a sign in the sales area of the dealership and on the purchase order. However, there is no requirement that they disclose the amount of the fee or other aspects of the dealer's contractual arrangement with a lender.
- **Section 3** of the bill provides that the disclosure requirements contained in sections 1 and 2 of the bill do not impose any civil or criminal liability on a dealer for failure to make the required disclosures.

Corporate Surety Bond Requirements. Under current law, all applicants approved for a license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler must post a bond of $25,000 for one established salesroom (for a dealer) or place of business (for the other licensees) and $10,000 for every additional salesroom (for a dealer) or additional place of business (for other licensees). ***Section 4*** of the bill would increase the $25,000 bonding requirement to $50,000 and the $10,000 bonding requirement to $25,000.

Failure to Deliver Free and Clear Title. ***Section 4*** of the bill also clarifies that dealers who have suffered a loss due to the failure of a license holder to deliver free and clear title to a vehicle to that dealer, has the right to institute an action to recover against the offending license holder and the surety bond.

Effective Date: Sections 1 through 3 become effective October 1, 2001, and the remainder of the act becomes effective when it becomes law.

Esther Manheimer, Counsel to the Senate Commerce committee, contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
S.B. 649 A BILL TO BE ENTITLED AN ACT TO REQUIRE CONSPICUOUS DISCLOSURE OF MOTOR VEHICLE DEALER ADMINISTRATIVE FEES AND FINANCE YIELD CHARGES AND TO INCREASE DEALER SURETY BOND PROTECTION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

Kristen Corbett (Rep. Goodwin)

From: Margie Penven (Rep. Hensley)
Sent: Thursday, May 31, 2001 9:19 AM
To: Kristen Corbett (Rep. Goodwin)
Subject: MINUTES 5-30-01

MINUTES
HOUSE JUDICIARY III SUBCOMMITTEE
CHARGED TO REVIEW HOUSE BILL 1134

May 30, 2001

By memorandum dated May 17, 2001, Rep. Wayne Goodwin, Chair of the House Judiciary III Committee, appointed this subcommittee to review House Bill 1134, A BILL TO BE ENTITLED AN ACT TO PUNISH STUDENTS WHO CONSPIRE OR THREATEN TO CAUSE VIOLENCE AT SCHOOL, TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, AND TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE, introduced by Rep. Don Davis. Members appointed to serve were Rep. Bob Hensley (Chair), Rep. Donald Bonner, Rep. Carolyn Russell, and Rep. Mark Crawford. (See Exhibit 1.)

On May 30, 2001, the subcommittee met in Room 424 of the Legislative Office Building at 11:00 a.m. All members were present.

Rep. Hensley called the meeting to order and asked Rep. Davis to explain his bill. Rep. Davis indicated that originally the bill was created to punish students making threats and to require the reporting of threats. He said several people involved in education had indicated that the original bill would cost the schools a lot of money and work to comply, and the bill had been sent to the subcommittee. Since then, Rep. Davis said he had drafted a new document taking out matters pertaining to education, such as school suspension, and making it a law enforcement bill. The only requirements put on school officials in the new bill are (1) to notify students and parents of their legal obligation to report threats, and (2) to report incidents and threats of violence to law enforcement officials.

Rep. Hensley asked that copies be made of Rep. Davis' proposed committee substitute so the members could have a copy before them as it was discussed. Copies were made and distributed. A copy of the proposed committee substitute, A BILL TO BE ENTITLED AN ACT TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE, TO PROVIDE THAT IDENTITY INFORMATION OF A

PERSON WHO REPORTS A POTENTIAL THREAT IS CONFIDENTIAL AND TO AUTHORIZE THE LRC TO STUDY ISSUES RELATED TO SCHOOL VIOLENCE is attached as Exhibit 3.

Rep. Russell said she liked the part in the original bill that required reports to be made regarding threats, and she asked whether that part was in the proposed committee substitute bill. Rep. Davis said it was still there.

Rep. Russell asked whether there was presently a law against *not* reporting threats. Rep. Hensley said he was not aware of a provision in the law that requires a person to report a threat.

Rep. Hensley noted that the bill included authorization for a LRC study and suggested that a study should be made before the bill is written. Rep. Russell said a study should be made of the problem of school violence and threats because it so important.

Rep. Davis said the district attorney from his district as well as Court of Appeals people had given him input in rewriting the bill.

Rep. Goodwin, who was sitting in as an ex-officio member of the subcommittee, said Section 2 (b) needed a time to be inserted for the person to make a report of violence such as "as soon as possible."

Rep. Bonner said a time, such as "the start of the school year" was also needed in Section 1, which requires local boards of education to notify students and their parents that they have a legal duty to report potential acts of violence to the appropriate school authority. There was discussion as to how the information should be given to the students and parents—whether through a handbook or handout—and Rep. Crawford pointed out that the wording could say, "The local boards of education shall provide rules through their administrative units...."

Rep. Hensley questioned the wording of "good cause" on line 4 of page 2. He asked Mrs. Karen Cochrane-Brown from the Research staff to look into the legal ramifications of the wording and make suggestions at the next meeting. Rep. Crawford questioned using "probable cause" or just plain "cause." Rep. Hensley said he didn't think a layman would understand the legal term "probable cause" although it had a meaning for lawyers and prosecutors.

Rep. Russell questioned the part that said the person making an accusation should give his name, but the identify of the person making the accusation would be kept confidential. She said she felt students would be more likely to give reports if they didn't have to tell their name. But she also feared a student could make unfounded accusations against another student and to cause him serious problems and grief, even resulting in suicide. Rep. Hensley said he also saw the confidentiality part as a problem since normally a person has the right to face his accuser.

Rep. Goodwin asked Rep. Davis how strongly he felt about leaving the confidentiality clause in the bill. Rep. Davis said he thought the accuser should have to give his name, but he thought it should be kept confidential.

Rep. Crawford said he felt students would be more likely to report incidents if they didn't have to give their name, and he thought the tone of their voices and their general demeanor

would indicate to the person accepting the call whether they were telling the truth.

The chair asked everyone to study the proposed bill over the several days and save their comments until the next meeting to be set for June 6, 11:00 a.m. in Room 1124.

The meeting adjourned at 11:55.

Respectfully submitted,

_____

Margie K. Penven
Subcommittee Assistant

_____

Rep. Bob Hensley
Subcommittee Chair

MEMORANDUM

TO: Rep. Wayne Goodwin, Chairman, Judiciary III

FROM: Rep. Bob Hensley

RE: Proposed House Committee Substitute for HB 1134

On May 17, 2001, you appointed a subcommittee to review HB 1134 introduced by Rep. Don Davis. Members appointed to serve were Rep. Bob Hensley (chair), Rep. Donald Bonner, Rep. Carolyn Russell, and Rep. Mark Crawford.

That subcommittee met on May 30, June 6, June 13, and June 20, 2001, to consider first the provisions of House Bill 1134, a subsequent proposed substitute for House Bill 1134 suggested by Rep. Davis, a proposed committee substitute drawn by staff serving the subcommittee, and finally today another proposed committee substitute. Upon a motion by Rep. M. Crawford, the subcommittee voted unanimously to recommend that the Committee on Judiciary III give the final proposed Committee Substitute a favorable report. That Committee Substitute, A BILL TO BE ENTITLED AN ACT TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, TO STUDY IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE, TO PROVIDE THAT IDENTITY INFORMATION OF A PERSON WHO REPORTS A POTENTIAL THREAT IS CONFIDENTIAL AND TO AUTHORIZE THE LRC TO STUDY ISSUES RELATED TO SCHOOL VIOLENCE, is attached.

The proposed committee substitute has been reviewed and approved by representatives of the State Board of Education, the School Boards Association, the Conference of District Attorneys, and the American Civil Liberties Union of North Carolina.

Attachment
June 20, 2001

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 10, 2001

The House Committee on Judiciary III met on Tuesday, July 10, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Ellis,Esposito, Fox, Hensley, Jarrell, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Oscar Harris is recognized to present SB 1081, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES. Representative Mark Crawford moves to have PCS before committee. Amendment passes. Ardis Watkins from SEANC speak for the bill No vote is taken on the bill.

There being no further business, the Chair adjourned the meeting at 12:45 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 10, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 1081 **Malicious Conduct By Prisoner**
Senator Oscar Harris

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

7/10/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Ann Talley	NCATL
Howard Newby	Physician of the Day
Yelda Watkins	SEANC - guest
Ardis Watkins	SEANC
John Phelps	NCLM
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Officers Assn
Rob Christensen	N&O
Deb Ross	Retired

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 17, 2001

The House Committee on Judiciary III met on Tuesday, July 17, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Jarrell, Kiser, and Russell. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Don Davis is recognized to discuss HB 1134, A BILL TO BE ENTITLED AN ACT TO PUNISH STUDENTS WHO CONSPIRE OR THREATEN TO CAUSE VIOLENCE AT SCHOOL, TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, AND TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE. Representative Davis requests that the committee send this bill to the study bill. Representative Daughtry moves that the Proposed Committee Substitute be given a favorable report, that the original bill be given an unfavorable report and that the bill be re-referred to Rules for study. Motion passes.

Senator Oscar Harris is called forward to explain SB 1081, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES. Representative Ellis moves to have both PCS's before the committee. Motion passes. Representative Capps moves to accept the Harris version of the PCS. Motion passes. Ardis Watkins, SEANC, speaks for the bill. Lt. Dennis Meechum, Central Prison, speaks for bill. Rep. Jarrell makes a motion to amend. Motion is withdrawn. Representative Mark Crawford moves to give a favorable report to the Proposed Committee Substitute, and to give an unfavorable report to the original bill. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 17, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1134 **Disciplinary Action/Threats of School Violence**
Representative Don Davis

SB 646 **Harm or Hinder Law or Assistance Animals**
Senator Tony Rand

SB 1081 **Malicious Conduct By Prisoner**
Senator Oscar Harris

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 7/17/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanne McDaniel	DJJDP - Center for the Prevention of School Violence
Susan Harrison	WCPSS
John Bingham	Cary High A.P.
Eddie Caldwell	H.C.&F.C.A.
Linda Suggs	NCASA
Robin Riddick	NCASA
[illegible]	DJJDP
Dee Brewer	NCDOT/SERVE/SBE
Ellen Phillips	SBE
Ann Bulam	Bulam Associates
Beth Wilson	NCATL
Leanne Winner	NCSBA
Dennis Mecum	NCDOC
Arals Watkins	SEA NC
Nelda Watkins	Public
Jack Cozort	NCAE
S.J. Gutierrez	Lexington Police Dept
T.D. Lowe Cannon	Cumberland Co. Sheriff's Office

HOUSE BILL 1134:
Must Report Threats of School Violence.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Davis
Date:	July 3, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (H1134-CSLH-9[v.7])		Committee Counsel

SUMMARY: ***A subcommittee of the House Judiciary III committee recommends this proposed committee substitute for House Bill 1134. The PCS creates a legal duty to report actual knowledge of another person's plans to commit acts of school violence. Failure to report such knowledge is punishable as a Class 3 misdemeanor. The identity of the person making the report remains confidential except in certain circumstances. The PCS also increases the criminal penalty for retaliation against a person who reports threats of school violence. Finally, the LRC is authorized to conduct a comprehensive study of the issue of school violence, including a study of whether there should be an automatic grant of immunity from prosecution to any suspect who reports a potential act of school violence.***

BILL ANALYSIS:

Section 1. – This section adds a conforming change to the Education Law, directing local boards of education to notify students and their parents that there is a legal duty to report potential acts of school violence to the appropriate school authority.

Section 2. – This section amends Article 36 of Chapter 14 of the General Statutes (Offenses Against Safety) by creating a new G.S. 14-285.1. This new section would require any person to report to the appropriate school authority when that person has actual knowledge that another person plans or conspires to commit an act of school violence. School violence is defined as a criminal offense that is a Class A through E felony or other criminal offense that includes assault as an essential element of proof that occurs on school or educational property.

The report may be made orally, by telephone, by electronic mail, or in writing. The report must include all relevant information known by the person making the report. The identity of the person making the report is confidential and may only be disclosed to the appropriate school authority, the appropriate law enforcement agencies, appropriate medical agencies, a magistrate who may issue a warrant, and when required in the context of a court proceeding. Disclosure of this information is punishable as a Class 3 misdemeanor.

It would also be a Class 3 misdemeanor to fail to report a potential act of school violence. Conviction of a Class 3 misdemeanor is a minimum 1-10 days of community punishment, assuming no prior convictions, a maximum fine of $200, or both the community punishment and the fine.

Section 3. – This section amends Article 1 of Chapter 14 of the General Statutes (Felonies and Misdemeanors) by adding a new G.S. 14-3.2 that would increase the level of offense when a person retaliates against a person who made a report of school violence.

It would be a Class 1 misdemeanor if a person commits a class 2 or 3 misdemeanor against any person in retaliation for making a report of school violence. Conviction of a Class 1 misdemeanor is a minimum 1-45 days of community punishment, a fine in the court's discretion, or both.

It would be a Class I felony if a person commits a Class A1 or Class 1 misdemeanor against any person in retaliation for making a report of school violence. Conviction of a Class I felony has a presumptive minimum sentence of four to six months community punishment, assuming no prior convictions.

Section 4. – Section 4 authorizes the Legislative Research Commission to study the issue of school violence and the creation of the legal duty to report suspected acts of school violence. The study specifically includes consideration of whether the law should be amended to provide for an automatic grant of immunity from prosecution to any suspect who reports a potential act of school violence, and the experience of other states in addressing the issue of school violence.

Section 5. - Thirty thousand dollars is appropriated to the General Assembly to implement the study.

Section 6. – Sections 1 and 6 of the act are effective when it becomes law. Sections 2 and 3 become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 4 and 5 become effective July 1, 2001.

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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HOUSE BILL 1134

Committee Substitute Reported Without Prejudice 4/23/01
PROPOSED COMMITTEE SUBSTITUTE H1134-CSLH-9 [v.7]

7/3/2001 9:54:56 AM

Short Title: Must Report Threats of School Violence. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE A LEGAL DUTY TO REPORT THREATS OF SCHOOL VIOLENCE, , TO PROVIDE THAT IDENTITY INFORMATION OF A PERSON WHO REPORTS A POTENTIAL THREAT IS CONFIDENTIAL, TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN CRIMINAL OFFENSES COMMITTED WITH THE INTENT OF INTIMIDATING OR RETALIATING AGAINST A PERSON WHO DOES REPORT A THREAT OF SCHOOL VIOLENCE, TO AUTHORIZE THE LRC TO STUDY WHETHER TO GRANT IMMUNITY FROM CRIMINAL PROSECUTION TO ANYONE WHO REPORTS A THREAT OF SCHOOL VIOLENCE AND OTHER ISSUES RELATED TO SCHOOL VIOLENCE, AND TO APPROPRIATE FUNDS FOR THE STUDY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-391 is amended by adding a new subsection to read:

"(f1) At the beginning of the school year, local boards of education through their administrative units, shall notify students and their parents that there is a legal duty to report potential acts of school violence to the appropriate school authority."

SECTION 2. Article 36 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-285.1. Duty to report threat of school violence.**

(a) The following definitions apply in this section:

(1) Educational property. – Defined in G.S. 14-269.2.

(2) Employee. – Defined in G.S. 14-269.2.

(3) School. – Defined in G.S. 14-269.2.

(4) School authority. – The principal, head of the school, or other adult employee designated by the principal or head of the school.

(5) School violence. – A criminal offense that is a Class A through E felony or any other criminal offense for which assault is an essential element of proof that occurs at a school or on educational property.

(b) Any person who has actual knowledge that another person plans or has conspired to commit an act of school violence shall report his or her knowledge to the appropriate school authority at his or her school or at the school where the potential act of school violence may occur.

(c) The report may be made orally, by telephone, by electronic mail, or in writing. The report shall include information as is known to the person making the report, including the following:

(1) The name and address, if known, of the suspected perpetrator.

(2) If the perpetrator is a juvenile, the name and address, if known, of the juvenile's parent, guardian, or caretaker.

(3) The nature, time, date, and location of the potential act of school violence.

(4) The name, address, if known, and telephone number, if known, of the person who is making the report. However, this information shall remain confidential as provided by subsection (d) of this section.

(5) Any other information that the person making the report believes might be helpful in establishing the need for intervention or precautionary measures to be taken by a school authority.

(d) The name, address, telephone number, and any other identifying information of a person who reports a potential act of school violence is confidential and shall be disclosed only to the appropriate school authority, the appropriate law enforcement agencies, appropriate medical agencies, a magistrate who may issue a warrant, and when required in the context of a court proceeding. Except as provided by this subsection, the disclosure of any information deemed confidential under this subsection is a Class 3 misdemeanor.

(e) Failure to report a potential act of school violence as required by this section is a Class 3 misdemeanor."

SECTION 3. Article 1 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-3.2. Punishment of misdemeanor committed with intent to intimidate or retaliate against a person for reporting a potential act of school violence.**

If any Class 2 or Class 3 misdemeanor is committed against a person because the person reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed against a person because the person reported a potential act of school violence in compliance with G.S. 14-285.1, the offender is guilty of a Class I felony."

SECTION 4. The Legislative Research Commission may study the issue of school violence and the creation of a legal duty to report suspected acts of school

violence imposed by this act. The study shall include input from the State Board of Education, the School Boards Association, the Conference of District Attorneys, and the American Civil Liberties Union of North Carolina, as well as any other public or private person or entity interested in the issue. In conducting the study the Legislative Research Commission shall consider the following:

1. The laws and public policies regarding the issue of school violence currently in existence;
2. The results and effectiveness of the laws enacted by this act to address the need to report potential acts of school violence;
3. The specific experience of other states in addressing the issue of school violence and the effectiveness of legislative measures that have been adopted in other states;
4. Whether the law should be amended to provide for an automatic grant of immunity from prosecution to any suspect who reports a potential act of school violence, and if so, for what offenses the immunity should be granted, and to whom and under what circumstances written notice of the grant of immunity should be given;
5. Any other issue relevant to the study.

The Legislative Research Commission may submit a progress report of its study to the 2001 General Assembly, Regular Session 2002, upon its convening and shall submit its final report to the 2003 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation.

SECTION 5. There is appropriated from the General Fund to the General Assembly the sum of thirty thousand dollars ($30,000) for the 2001-2002 fiscal year to implement this study.

SECTION 6. Section 1of this act is effective when it becomes law and applies beginning with the 2001-2002 school year. Sections 2 and 3, of this act become effective December 1, 2001, and apply to offenses committed on or after that date. Sections 4 and 5 of this act become effective July 1, 2001. Section 6 of this act is effective when it becomes law.

SEN. HARRIS

407

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☐ Committee Substitute for
S.B. 1081 A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE FOR A PRISONER TO THROW BODILY FLUIDS AT AN EMPLOYEE OF A DETENTION FACILITY WHILE IN THE PERFORMANCE OF THE EMPLOYEE'S DUTIES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to House committee substitute bill, ☒ which changes the title, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 24, 2001

The House Committee on Judiciary III met on Tuesday, July 24, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Capps, M. Crawford, Daughtry, Ellis, Fox, Hensley, Jarrell, and Russell. Brenda Carter, Committee Counsel was present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Brad Miller is recognized to discuss SB 866, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT. Representative Hensley moves to have the PCS before the committee. Motion passes. Ed Smith, State Civil Rights Division, and Alan Perry, Governor's Advocacy Council both speak for bill. Representative Mark Crawford moves for a favorable report to the Proposed Committee Substitute and an unfavorable report to the original bill. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 24, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 866 **Persons With Disabilities Changes-AB**
Senator Brad Miller

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

7/24/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Ann Tyner	GRNC
W. T. Daniel Jr	" V.P.
Jim Mixon	NC Home Builders Assn
John Phelps	NCLM
Martha Chess	DOA
MT Burnette	GACPD
Allen Pope	GACPA
Ed Smith	N.C. Civil Rights Div.
Cam Cowell	BIMIC
Deb Ross	
Dave Reid	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 866

Judiciary II Committee Substitute Adopted 4/24/01
Third Edition Engrossed 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S866-CSRV-25 [v.2]

7/23/2001 6:35:58 PM

Short Title: Persons with Disabilities Changes.-AB (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-2(a) reads as rewritten:

"(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State."

SECTION 2. G.S. 168A-3 reads as rewritten:

"**§ 168A-3. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(1) 'Disabling condition' means any condition or characteristic that renders a person a person with a disability.

(1a) 'Discriminatory practice' means any practice prohibited by this Chapter.

(2) 'Employer' means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) 'Employment agency' means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as § 168A-3(7).

(5) Recodified as § 168A-3(1).

(6) 'Labor organization' means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) 'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) 'Person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. 'Physical or mental impairment' means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. 'Is regarded as having an impairment' means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) 'Place of public accommodations' includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which

supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) 'Qualified person with a disability' means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) 'Reasonable accommodations' means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that 'reasonable accommodation' does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or
2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or
3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or

4. Alter, modify, change or deviate from bona fide seniority policies or practices; or
5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or
~~6. Make physical changes to accommodate a person with a disability where:~~
~~I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or~~
~~II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or~~
~~7.~~6. Make any changes that would impose on the employer an undue ~~hardship, provided that the costs of less than five percent (5%) of an employee's salary or annualized wage as determined in subsection (6) above shall be presumed not to be an undue hardship.~~hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) 'Undue hardship' means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.

b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on

expenses and resources at the facility, and any other impact on the operation of the facility.

c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.

d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity; the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity."

SECTION 3. G.S. 168A-3 as amended by Section 2 of this act reads as rewritten:

"**§ 168A-3. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(1) 'Disabling condition' means any condition or characteristic that renders a person a person with a disability.

(1a) 'Discriminatory practice' means any practice prohibited by this Chapter.

(2) 'Employer' means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) 'Employment agency' means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as § 168A-3(7).

(4a) 'Information technology' has the same meaning as in G.S. 147-33.81. The term also specifically includes information transaction machines.

(5) Recodified as § 168A-3(1).

(6) 'Labor organization' means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) 'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) 'Person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life

activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. 'Physical or mental impairment' means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. 'Is regarded as having an impairment' means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) 'Place of public accommodations' includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person. <u>This includes equivalent services provided via information technology.</u>

(9) 'Qualified person with a disability' means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a

disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) 'Reasonable accommodations' means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that 'reasonable accommodation' does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or

2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or

3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or

4. Alter, modify, change or deviate from bona fide seniority policies or practices; or

5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or

6. Make any changes that would impose on the employer an undue hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) 'Undue hardship' means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.

b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.

c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.

d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity; the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity."

SECTION 4. G.S. 168A-7 reads as rewritten:

"**§ 168A-7. Discrimination in public service.**

(a) It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations do not impose an undue hardship on the entity involved.

(b) The North Carolina Office on the Americans with Disabilities Act is responsible for coordinating technical assistance and determining the standards of review for accessibility of information technology.

(c) A State department, institution, or agency, any political subdivision of the State, and any person that contracts with these entities for the delivery of public services

shall administer its services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities."

SECTION 5. Chapter 168A of the General Statutes is amended by adding a new section to read:

"**§ 168A-10.1. Dispute resolution in public services discrimination cases.**

The North Carolina Office on the Americans with Disabilities Act shall adopt rules for dispute resolution processes to govern public services' responsiveness and to provide a consistent and comprehensive mechanism for accommodating accessibility requests."

SECTION 6. Section 3 of this act becomes effective July 1, 2002, and applies to information technology placed into service on or after that date.

The remainder of this act becomes effective October 1, 2001.

SB 866 Disabilities Act Changes

- **Enhancing North Carolina's Leadership:** SB 866 was introduced at the request of the Governor's Advocacy Council for Persons with Disabilities (GACPD), which is the North Carolina agency charged with protecting the rights of people with disabilities. Chapter 168A, Persons With Disabilities Protection Act, was one of the first state disability protection legislation in the country and has since been a model for other states and was one basis for the Americans with Disabilities Act (ADA).

- **Paralleling the ADA:** SB 866 updates N.C.G.S. 168A by incorporating contemporary language of the ADA into the state statute. Language regarding public accommodations and public employment, particularly undue hardship, are taken directly from the ADA.

- **Electronic Access:** It also includes for the first time references to accessibility to information and electronic technology for people with disabilities. These provisions are already required for those subject to the ADA.

- **Dispute Resolution Processes:** The bill also requires dispute resolution processes to be developed to resolve complaints arising from this statute. It could be called, "North Carolina solutions for North Carolina problems" and is an effort to have a method in place for resolving complaints without having to go to the U.S. Dept. of Justice or the Office of Civil Rights. Complaints that have to go through the federal system can take three years or longer to resolve. In the case of students needing accommodations to pursue their studies, the person likely graduates before the dispute is resolved. It is the intention of SB 866 to greatly reduce the time and cost needed to resolve complaints.

- **No Fiscal Note:** There is no fiscal note as the requirements found in SB 866 regarding public employers and providers of public accommodations are already subject to the same provisions. The purpose of SB 866 is to put into one statute the requirements and processes outlined above for all entities covered under 168-A.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 26, 2001

The House Committee on Judiciary III met on Thursday, July 26, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Representatives Bell, Capps, Cole, M. Crawford, Ellis, Esposito, Fox, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Fountain Odom was called forward to explain SB 680, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ONLY THE STATE MAY BRING CERTAIN CIVIL ACTIONS AGAINST FIREARMS OR AMMUNITION MARKETERS, MANUFACTURERS, DISTRIBUTORS, DEALERS, SELLERS, OR TRADE ASSOCIATIONS AND TO AMEND THE LAWS REGARDING GUN SHOWS. Representative Ellis makes a motion to have PCS before the committee. Motion passes. Eddie Caldwell with the NC Sheriff's Association speaks for original bill and against the PCS. Representative Barefoot makes a motion for an unfavorable report to the original bill, a favorable report to the PCS, and to be re-referred to the Finance committee. Margaret Ann Tyner from GRNC speaks on bill. Representative Barefoot's motion passes.

There being no further business, the Chair adjourned the meeting at 12:35 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 26, 2001
Room 421 LOB
15 Minutes after Session

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 680 **Lawful Firearm Activities Protected**
Senator Fountain Odom

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 7/26/01
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Ann Tyner	ARNC
Becky Street	PPAB
Nicole Palya	NRA
Joe McClees	McClees Consulting
John McHugh	GOV OFFICE
John Phelps	NCLM
Ann McClees	McClees Consulting
Thomas Dail	Freedom Raleigh
W Daniel Jr	GRNC VP
Eddie Caldwell	NC Sheriffs Assn
Jeff Rau	Grass Roots NC
Michael Hamser	Insider

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 680

Judiciary II Committee Substitute Adopted 4/25/01
Finance Committee Substitute Adopted 6/26/01
Fourth Edition Engrossed 6/27/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S680-CSRO-37 [v.1]

7/25/2001 12:02:34 PM

Short Title: Lawful Firearm Activities Protected. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ONLY THE STATE MAY BRING CERTAIN CIVIL ACTIONS AGAINST FIREARMS OR AMMUNITION MARKETERS, MANUFACTURERS, DISTRIBUTORS, DEALERS, SELLERS, OR TRADE ASSOCIATIONS AND TO AMEND THE LAW REGARDING CONCEALED HANDGUN PERMIT FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health,

safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 2. G.S. 14-415.19(a) reads as rewritten:

"(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be remitted or credited by the county finance officer in accordance with the provisions of this subsection. The permit fees are as follows:

Application fee	$80.00
Renewal fee	$75.00
Age 70 renewal fee	$5.00
Duplicate permit fee	$15.00

~~The~~ Except in the case of a renewal issued to an individual who is at least 70 years of age, the county finance officer shall remit forty-five dollars ($45.00) of each new application fee and forty dollars ($40.00) of each renewal fee to the North Carolina

Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining thirty-five dollars ($35.00) of each application or renewal fee shall be used by the sheriff to pay the costs of administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only."

SECTION 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 4. Section 1 of this act is effective when it becomes law and applies to any action pending or filed on or after that date. Section 2 of this act becomes effective December 1, 2001, and applies to fees assessed on or after that date. Sections 3 and 4 of this act are effective when they become law.

SENATE BILL 680:
Lawful Firearm Activities Protected

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Sen. Odom
Date:	July 26, 2001	**Summary by:**	Dianna Jessup
Version:	Fourth Edition		Committee Counsel

SUMMARY: Senate Bill 680 does two things:

- ***It provides that the authority to bring suit and the right to recover against a firearms manufacturer or seller for damages resulting from the lawful manufacture or sale of firearms or ammunition is reserved exclusively to the State, and may be exercised by the Attorney General on behalf of the State. This part of the bill is substantially the same as House Bill 622 (Firearm Regulation Amendments), which was reported favorably by this committee.***
- ***It requires a person who sponsors a gun show to obtain a gun show promoter permit. The Senate Judiciary II Committee added this part to the bill.***

AUTHORITY TO BRING CIVIL ACTIONS AGAINST A FIREARMS MANUFACTURER OR SELLER RESTS SOLELY WITH THE STATE: ***This part is effective when it becomes law and applies to any action pending or filed o nor after that date.***

G.S. 14-409.40 generally preempts local governments from regulating firearms. Except as permitted by statute, no county or municipality may regulate the possession, sale, or transfer of firearms or ammunition. **Section 1** provides that the authority to bring suit and the right to recover against a firearms manufacture or seller for damages resulting from the lawful design, marketing, manufacture, distribution and sale or transfer of firearms is reserved exclusively to the State, and may be exercised by the Attorney General on behalf of the State. The bill specifically provides that the preemption does not prevent a local government from bringing an action against a firearms dealer or manufacturer for breach of contract or warranty with regard to firearms or ammunition purchased by the local government.

GUN SHOW PROMOTER PERMIT: ***This part becomes effective December 1, 2001, and applies to gun shows occurring on or after that date.***

Section 2 requires a person who sponsors a gun show to obtain a gun show promoter permit. A permit is required for each gun show and it expires at the conclusion of the gun show. It would be a Class 1 misdemeanor for a person to sponsor a gun show without obtaining this permit.

Only a licensed dealer who has obtained a sales tax certificate of registration may sell firearms at the gun show. A person who is not a licensed dealer may exhibit firearms at a gun show for sale; however, only a licensed dealer may sell, lease, or otherwise transfer a firearm. At the conclusion of the show, the vendor must file a sales tax return and remit the sales tax owed. The tax must be remitted within 10 days after the end of the semimonthly period during which the show concluded as if the vendor was required to report on a semimonthly basis. It would be a Class 1 misdemeanor for a vendor to fail to comply with these provisions.

A gun show is defined as an event at which 100 or more firearms or other weapons, such as a bowie knife, dirk, dagger, etc., are offered or exhibited for sale, transfer, or exchange by ten or more vendors. A gun show promoter is a person who organizes, promotes, or otherwise sponsors a gun show. A person who

wishes to sponsor a gun show must apply for a gun show promoter permit with the sheriff of the county in which the gun show will take place. The person should submit the application at least 60 days prior to the date of the gun show. The sheriff must respond to the application within 30 days. If the application is denied, the applicant may appeal the sheriff's decision by petitioning a district court judge of the district in which the application was filed.

The sheriff must grant the application for a permit if the applicant meets the requirements in the bill:

- The applicant must not be prohibited by State or federal law from purchasing, transferring, receiving, or possessing a handgun.
- The applicant must be of good moral character.
- The applicant could not be denied a permit under G.S. 14-404. A sheriff could deny a person a permit under G.S. 14-404 if the person was a fugitive, an unlawful user of drugs, mentally incompetent, an illegal alien, dishonorably discharged from the military, subject to a court order that restrains the person from threatening an intimate partner or child of an intimate partner, or under indictment or convicted by any court in the United States of a felony.
- The applicant paid the $100 gun show promoter permit fee.

The proceeds of the $100 fee payable by an applicant for a gun show permit must be allocated to the sheriff and used to pay the costs of administering this Article and for other law enforcement purposes.

Section 3 contains a severability clause that provides that if any part of the act is held invalid the invalidity will not affect other provisions.

Cindy Avrette contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 680 (2nd Edition)

SHORT TITLE: Lawful Firearm Activities Protected

SPONSOR(S): Senator Odom

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available (X)		
	County Fees		County Jails		
	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
Fees Collected by Counties	**$2,500**	**$5,000**	**$5,000**	**$5,000**	**$5,000**

GENERAL FUND EXPENDITURES

Correction -- No fiscal impact
Judicial Branch -- No fiscal impact
Department of Justice -- No fiscal impact

(Although we cannot project the number of new county jail inmates due to this bill, it should be noted that Class 1 misdemeanants could receive active jail sentences.)

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice; Department of Correction; Judicial Branch; County Jails; and County Governments.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law and applies to any action pending or filed on or after that date. Section 2 of this act becomes effective December 1, 2001, and applies to gun shows occurring on or after that date. Section 3 and 4 of this bill are effective when they become law.

BILL SUMMARY:
The proposed bill adds new G.S. 14-409.40(g), which provides that only the state may bring certain civil actions against firearms or ammunition marketers, manufacturers, distributors,

dealers, sellers, or trade associations. This bill would further require the Attorney General to bring any action against any of the aforementioned parties.

Adds new Article 54C("Gun Shows") to GS Chapter 14. Requires that a gun show promoter pay a $100 application fee to the sheriff of the county where the show will be held. The sheriff is to determine whether the applicant would qualify for a gun permit under GS 14-404 and if so, issue the gun show permit. Thirty days before the show, the promoter must provide the sheriff with the specifics of the gun show or risk revocation of gun show permit.

GS 14-415.34 provides that each vendor must obtain a sales tax certificate of registration as required by GS 105-164.4(c). Within ten days after the end of the semimonthly period during which the show concluded, each vendor must file a sales tax return and pay the tax under Article 5 of Chapter 105 of the General Statutes. Violations of this Article are class 1 misdemeanors.

ASSUMPTIONS AND METHODOLOGY:

Department of Justice
Based on discussions with officials at the Department of Justice, they don't expect any impact from this bill given the small number of cases.

Department of Correction
Although it is unknown the number of offenders who may be sentenced for a violation of this act, Fiscal Research does not expect this bill to have an impact on the Department of Correction. In some cases though, local jails may be impacted. In 1999/2000, 15% of Class 1 misdemeanors resulted in active sentences, with an average sentence length of 45 days. Offenders serving active sentences of less than 90 days are housed in county jails.

Judicial Branch
SB 680 makes any violation of the new Article 54C a Class 1 misdemeanor. Thus, the bill creates several new Class 1 misdemeanor offenses. The Administrative Office of the Courts (AOC), however, does not have any reliable data available to estimate the number of new prosecutions that would arise. AOC does have data on violations of GS-14-402(a) where it is a Class 2 misdemeanor to sell, transfer, purchase, or receive a pistol or crossbow unless the purchaser or receiver has obtained a permit. This legislation would have the effect of extending these requirements to other weapons, including handguns, shotguns, and rifles. In calendar year 2000, only 30 defendants statewide were charged under 14-402(a).

Although some new charges can be expected to result, Fiscal Research believes that any increase can be absorbed with existing resources.

County Government
New GS 14-415.31(b) requires gun show promoters to obtain a permit from the sheriff for each show as well as pay a $100 fee to offset administrative costs. Based on data from the NC Sheriff's Association, it is estimated that 50 gun shows are held annually throughout North Carolina. Thus, charging $100 for each show would result in approximately $5,000 being collected by Counties each year.

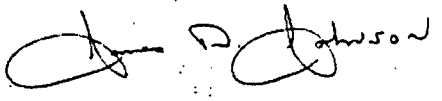
SOURCES OF DATA: Department of Justice, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and North Carolina Sheriff's Association

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Lisa Robinson and Jim Mills

APPROVED BY: James D. Johnson



DATE: June 7, 2001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S.B. 680 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ONLY THE STATE MAY BRING CERTAIN CIVIL ACTIONS AGAINST FIREARMS OR AMMUNITION MARKETERS, MANUFACTURERS, DISTRIBUTORS, DEALERS, SELLERS, OR TRADE ASSOCIATIONS AND TO AMEND THE LAWS REGARDING GUN SHOWS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to House Committee Substitute Bill, ☒ which changes the title, unfavorable as to Senate Committee Substitute Bill, and recommendation that the House Committee Substitute Bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA

President
SHERIFF LITCHARD D. HURLEY
Randolph County

1st Vice President
SHERIFF EARL R. "MOOSE" BUTLER
Cumberland County

2nd Vice President
SHERIFF JIM PENDERGRAPH
Mecklenburg County

Chairman Executive Committee
SHERIFF W.E. (Billy) SMITH
Lenoir County

Secretary-Treasurer
SHERIFF WAYNE V. GAY
Wilson County

Executive Director
DONNA MAYNARD

Telephone (919) 783-8899 • Fax (919) 783-5272
E-mail ncsa@ncsheriffs.net
Mail Address: P. O. Box 20049 • Raleigh, N. C. 27619-0049
Suite 101 • 3709 National Drive • Raleigh, N. C. 27612
Web Page Address: ncsa@ncsheriffs.org

Please Note Address Change

TO: House Judiciary III Committee Members

FROM: Sheriff Litchard Hurley, President
North Carolina Sheriffs' Association

DATE: July 24, 2001

RE: Senate Bill 680, Lawful Firearm Activities Protected

Section 2 of Senate Bill 680, Lawful Firearm Activities Protected, is strongly supported by the North Carolina Sheriffs' Association, and we request your support of this legislation also. This legislation will authorize the Sheriffs of North Carolina to issue permits to operators of gun shows held in our jurisdiction, and will accomplish several important law enforcement objectives:

— The Sheriff will have advance notice of gun shows to be held in the county. Currently, Sheriffs often learn of the gun show from reading a newspaper advertisement, often during or only briefly before the gun show is held. By having advance notice, the Sheriff will be able to coordinate with the gun show promoter in an effort to obtain compliance with the laws that regulate firearms.

— At most gun shows, the greatest potential for violations of the gun laws is in the area outside the building where the gun show is held. Advance notice will allow the Sheriff the opportunity to have sufficient officers available, as needed, to staff the event.

— The requirement for a gun show permit will provide an important additional incentive to the gun show operator to take responsibility for compliance with the gun laws within the gun show premises.

— The requirement that gun dealers display their gun dealer's license at the gun show will assist law enforcement officers in determining who is a licensed gun dealer and who is not.

In summary, Section 2 of Senate Bill 680 will assist the Sheriffs of North Carolina in our effort to enforce the gun laws at gun shows, both within the building where the gun show is held, and in the parking lots and adjacent premises where unlawful transfers of handguns often occur. Therefore, the North Carolina Sheriffs' Association urges your support for this provision of Senate Bill 680.

The North Carolina Sheriffs' Association is a Non-profit, Tax Exempt organization recognized by the I.R.S.
Our tax identification is 56-1079943

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

July 31, 2001

The House Committee on Judiciary III met on Tuesday, July 31, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Esposito, Fox, Hensley, Jarrell, Kiser, Russell, and Weatherly. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Tony Rand is called up to explain SB 646, A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, TO OBSTRUCT OR DELAY THE ANIMAL IN THE PERFORMANCE OF ITS OFFICIAL DUTIES, OR TO TEASE OR HARASS THE ANIMAL. Representative Mark Crawford moves to have the PCS before the committee. Motion passes. Sgt. T.D. Loughman of the Cumberland County Sheriff's Dept. speaks for the bill. Representative Hensley offers a perfecting amendment that fails. Representative Daughtry moves to give a favorable report to the PCS and an unfavorable report to the original bill. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:40 PM.

Respectfully submitted,

Wayne Goodwin
Representative Wayne Goodwin
Chairman

Kristen Corbett
Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 31, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 646 **HARM OR HINDER LAW OR ASSISTANCE ANIMALS**
Senator Tony Rand

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 7-31-01

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Pier	American Kennel Club, Raleigh
Carole Lawler	E&HS
Timothy Longman	CCSO
John Phelps	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 646

Judiciary I Committee Substitute Adopted 4/25/01

Short Title: Harm or Hinder Law or Assistance Animals. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, TO OBSTRUCT OR DELAY THE ANIMAL IN THE PERFORMANCE OF ITS OFFICIAL DUTIES, OR TO TEASE OR HARASS THE ANIMAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"**§ 14-163.1. ~~Injuring, maiming, or killing law enforcement~~Assaulting a law enforcement agency ~~animal.~~animal or an assistance animal.**

~~Any person who knows or has reason to know that an animal is used for law enforcement purposes such as investigation, detection of narcotics or explosives, or crowd control, by any law enforcement agency and who willfully and not in self defense, causes serious injury to, maims, or kills that animal is guilty of a Class I felony.~~

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a person who is handicapped as defined in G.S. 168-1. The term 'assistance animal' is not limited to a dog and includes any animal trained to assist a handicapped person as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(3) Physical harm. – Any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(4) Serious physical harm. – Physical harm that does any of the following:

a. Carries a substantial risk of death.

b. Causes permanent maiming or that involves some temporary, substantial maiming.

c. Causes acute pain of a duration that results in substantial suffering.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully and not in self-defense causes or attempts to cause serious physical harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully and not in self-defense causes or attempts to cause physical harm to the animal is guilty of a Class A1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully and not in self-defense does any of the following is guilty of a Class 1 misdemeanor:

(1) Taunts, teases, or harasses the animal.

(2) Delays, obstructs, or attempts to delay or obstruct the animal in the performance of an official duty.

(e) This section does not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section."

SECTION 2. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 646

Judiciary I Committee Substitute Adopted 4/25/01
House Committee Substitute Favorable 8/1/01
Fourth Edition Engrossed 8/13/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S646-CSSW-60 [v.2]

8/15/2001 2:55:48 PM

Short Title: Harm or Hinder Law or Assistance Animals. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, OR TO OBSTRUCT, DELAY, TEASE, OR HARASS THE ANIMAL IN THE PERFORMANCE OF ITS DUTIES AS A LAW ENFORCEMENT AGENCY ANIMAL OR ASSISTANCE ANIMAL, AND TO MAKE IT UNLAWFUL TO RESTRAIN A DOG BY A CHAIN OR WIRE GROSSLY IN EXCESS OF THE SIZE NECESSARY TO RESTRAIN THE DOG SAFELY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"**§ 14-163.1. ~~Injuring, maiming, or killing law enforcement~~Assaulting a law enforcement agency ~~animal.~~animal or an assistance animal.**

~~Any person who knows or has reason to know that an animal is used for law enforcement purposes such as investigation, detection of narcotics or explosives, or crowd control, by any law enforcement agency and who willfully and not in self defense, causes serious injury to, maims, or kills that animal is guilty of a Class I felony.~~

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a 'handicapped person' as defined in G.S. 168-1. The term 'assistance animal' is not limited to a dog and includes any animal trained to assist a handicapped person as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(3) Physical harm. – Any injury, illness, or other physiological impairment.

(4) Serious physical harm. – Physical harm that does any of the following:

a. Creates a substantial risk of death.

b. Causes maiming or causes substantial loss or impairment of bodily function.

c. Causes acute pain of a duration that results in substantial suffering.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause serious physical harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause physical harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency animal or assistance animal is guilty of a Class 2 misdemeanor.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section."

SECTION 2. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-362.3. Restraining dogs in a cruel manner.**

A person who maliciously restrains a dog using a chain or wire grossly in excess of the size necessary to restrain the dog safely is guilty of a Class 1 misdemeanor. For purposes of this section, 'maliciously' means the person imposed the restraint intentionally and with malice or bad motive."

SECTION 3. Section 1 of this act becomes effective December 1, 2001, and applies to offenses committed on or after that date. Prosecutions for offenses committed under Section 1 before its effective date are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. Section 2 of this act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 646:
Harm or Hinder Law or Assistance Animals.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Rand
Date:	July 17, 2001	**Summary by:**	Dianna Jessup
Version:	PCS S646-CSSW-57		Committee Counsel

SUMMARY: The PCS for Senate Bill 646 would amend G.S. 14-163.1 to make it a criminal offense to harm or attempt to harm a law enforcement agency or assistance animal, or to obstruct, delay, tease or harass the animal in the performance of its duties.

CURRENT LAW: Currently, G.S. 14-163.1 makes it a criminal offense to willfully, and not in self-defense, cause serious injury to, maim, or kill a law enforcement animal. Violation of the statute is a Class I felony, punishable by up to 15 month's active/intermediate punishment (presumptive minimum is 4-6 months' community punishment).

Under the animal cruelty statute, G.S. 14-360, it is a Class 1 misdemeanor (maximum 120 days' punishment) to intentionally overdrive, overload, wound, injure, torment, kill or deprive of necessary sustenance any animal. It is a Class I felony to maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill any animal. "Intentionally" is defined in the animal cruelty statute to mean an act committed knowingly and without justifiable excuse, and "maliciously" means an act committed intentionally and with malice or bad motive.

Federal law prohibits the willful and malicious harming of a police animal. Penalties include a ten-year maximum term of imprisonment if the offense permanently disables or disfigures, or causes serious bodily injury to or the death of, the animal. "Police animal" is defined as a dog or horse employed by a federal agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

BILL ANALYSIS: Senate Bill 646 would expand current G.S. 14-163.1 to assistance animals, making it a Class I felony to willfully, and not in self-defense, cause or attempt to cause serious physical harm to a law enforcement animal **or** an assistance animal (one that is trained to assist a person who is handicapped). The penalty would equal the penalty for maliciously torturing, mutilating, maiming, poisoning, or killing animals under the animal cruelty statute.

The act would also add a provision making it a Class A1 misdemeanor (maximum punishment 150 days) to willfully cause or attempt to cause any physical harm to a law enforcement animal or assistance animal. Under the animal cruelty statute, intentionally wounding or injuring an animal is a Class 1 misdemeanor. Finally, the act would add a provision making it a Class 1 misdemeanor to willfully taunt, tease, harass, delay, obstruct, or attempt to delay or obstruct a law enforcement or assistance animal in the performance of its duty. Obstructing an officer while the officer is discharging the officer's duty is a Class 2 misdemeanor with a maximum punishment 60 days.

The act makes clear that this section would not apply to a licensed veterinarian acting in accordance with the law and that self-defense would be an affirmative defense to a violation of this section.

EFFECTIVE DATE: The act would become effective December 1, 2001 and would apply to offenses committed on or after that date.

Wendy Graf and Amy Currie contributed to this summary. S646-SMSW-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 646 A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, OR TO OBSTRUCT, DELAY, TEASE, OR HARASS THE ANIMAL IN THE PERFORMANCE OF ITS DUTIES AS A LAW ENFORCEMENT AGENCY ANIMAL OR ASSISTANCE ANIMAL.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House Committee Substitute Bill (# 2), ☒ which changes the title, unfavorable as to House Committee Substitute Bill (#1).

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

ARTICLE 47.CRUELTY TO ANIMALS.

§ 14-360. Cruelty to animals; construction of section.

(a) If any person shall intentionally overdrive, overload, wound, injure, torment, kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a **Class 1 misdemeanor**.

(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a **Class I felony**. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362.

(c) As used in this section, the words "torture', "torment', and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(3) Activities conducted for lawful veterinary purposes.

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health.

§ 14-361.1. Abandonment of animals.

Any person being the owner or possessor, or having charge or custody of an animal, who willfully and without justifiable excuse abandons the animal is guilty of a **Class 2 misdemeanor**.

§ 14-362. Cock fighting.

A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a **Class 2 misdemeanor**. A lease of property that is used or is intended to be used for an exhibition featuring the fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

§ 14-362.1. Animal fights and baiting, other than cock fights, dog fights and dog baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is guilty of a **Class 2 misdemeanor**. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or

baiting of an animal, other than a cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.
(b) A person who owns, possesses, or trains an animal, other than a cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a **Class 2 misdemeanor.**
(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is guilty of a **Class 2 misdemeanor**.
(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a **Class I felony.**
(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

§ 14-362.2. Dog fighting and baiting.
(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, gambles on, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a **Class H felony**. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of a dog is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.
(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog is guilty of a **Class H felony.**
(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a **Class H felony.**

§ 14-363. Conveying animals in a cruel manner.
If any person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhuman manner, he shall be guilty of a **Class 1 misdemeanor**. Whenever an offender shall be taken into custody therefor by any officer, the officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody. The necessary expenses which may be incurred for taking charge of and keeping and sustaining the vehicle or other conveyance shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of such animal in an action therefor.

§ 14-363.1. Living baby chicks or other fowl, or rabbits under eight weeks of age; disposing of as pets or novelties forbidden.
If any person, firm or corporation shall sell, or offer for sale, barter or give away as premiums living baby chicks, ducklings, or other fowl or rabbits under eight weeks of age as pets or novelties, such person, firm or corporation shall be guilty of a **Class 3 misdemeanor**. Provided, that nothing contained in this section shall be construed to prohibit the sale of nondomesticated species of chicks, ducklings, or other fowl, or of other fowl from proper brooder facilities by hatcheries or stores engaged in the business of selling them for purposes other than for pets or novelties.

§ 14-363.2. Confiscation of cruelly treated animals.
Conviction of any offense contained in this Article may result in confiscation of cruelly treated animals belonging to the accused and it shall be proper for the court in its discretion to order a final determination of the custody of the confiscated animals.

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

August 7, 2001

The House Committee on Judiciary III met on Tuesday, August 7, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole M. Crawford, Daughtry, Ellis, Hensley, Jarrell, Kiser, and Russell. Representative Fox had an excused absence. Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Tony Rand is called forward to explain SB 990, A BILL TO BE ENTITLED AND ACT TO PROHIBIT PERSONS CONTRACTING WITH THE PUBLIC SCHOOLS FROM DISCLOSING INFORMATION ABOUT STUDENTS FOR A BUSINESS PURPOSE. Representative Kiser moves to have the PCS before the committee. Motion passes. Chairman Goodwin explains the PCS. Steve Hoffman from NC School Boards Association speaks for bill. Robin Johnson, Education Committee Counsel speaks about bill. Representative Ellis makes a motion for an unfavorable report to the PCS and a favorable report to the original bill. Division is called- the vote is 4 ayes and 7 nays. Motion defeated. Representative Mark Crawford moves for a favorable report to the PCS and an unfavorable to the original bill. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:50 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

August 7, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 990 **NO DISCLOSURE OF STUDENT INFO TO 3RD PARTIES**
Senator Tony Rand

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 8/7/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John B. Odell	NCASA
Steve Hoffman	NCSBA
Michelle Frazier	NC Bar Assoc.
John Phelps	NCCM
Stephen Daniels	NCFPC
Nathan Gibson	visitor
Deb Rood	

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 990
Judiciary I Committee Substitute Adopted 4/18/01

Short Title: No Disclosure of Student Info to 3rd Parties. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS CONTRACTING WITH THE PUBLIC SCHOOLS FROM DISCLOSING INFORMATION ABOUT STUDENTS FOR A BUSINESS PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-401.1. Prohibition on the disclosure of information about students.**

(a) A person who enters into a contract with a local board of education for the provision of goods or services shall not sell or otherwise use for a business purpose other than the performance of its obligations under the contract any information about students that it gains incidental to its performance under the contract unless the students' parents or guardians authorize such use of information.

(b) A violation of this section shall be punished as a Class 2 misdemeanor and when the defendant is an organization as defined in G.S. 15A-773(c) the fine shall be five thousand dollars ($5,000) for the first violation, ten thousand dollars ($10,000) for a second violation, and twenty-five thousand dollars ($25,000) for a third or subsequent violation.

(c) Nothing in this section shall preclude the enforcement of civil remedies as otherwise provided by law."

SECTION 2. This act is effective when it becomes law and applies to contracts entered into, renewed, or modified after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 990

Judiciary I Committee Substitute Adopted 4/18/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S990-CSRO-39 [v.1]

8/7/2001 10:13:51 AM

Short Title: No Disclosure of Student Info to 3rd Parties. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS CONTRACTING WITH THE PUBLIC SCHOOLS FROM DISCLOSING INFORMATION ABOUT STUDENTS FOR A BUSINESS PURPOSE AND TO MAKE EMERGENCY RESPONSE PLANS CONFIDENTIAL.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-401.1. Prohibition on the disclosure of information about students.**

(a) A person who enters into a contract with a local board of education for the provision of goods or services shall not sell or otherwise use for a business purpose other than the performance of its obligations under the contract any information about students that it gains incidental to its performance under the contract unless the students' parents or guardians authorize such use of information.

(b) A violation of this section shall be punished as a Class 2 misdemeanor and when the defendant is an organization as defined in G.S. 15A-773(c) the fine shall be five thousand dollars ($5,000) for the first violation, ten thousand dollars ($10,000) for a second violation, and twenty-five thousand dollars ($25,000) for a third or subsequent violation.

(c) Nothing in this section shall preclude the enforcement of civil remedies as otherwise provided by law."

SECTION 2. G.S. 143-318.11 is amended by adding a new subdivision to read:

"(8) To formulate plans by a local board of education relating to emergency response to incidents of school violence."

SECTION 3. G.S. 115C-47 is amended by adding a new subsection to read:

"(39) To Adopt Emergency Response Plans. – Local boards of education may adopt emergency response plans relating to

incidents of school violence. These plans are not a public record as the term 'public record' is defined under G.S. 132-1, and shall not be subject to inspection and examination under G.S. 132-6."

SECTION 4. Section 1 of this act is effective when it becomes law and applies to contracts entered into, renewed, or modified after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 990:
No Disclosure of Student Info to 3rd Parties.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Sen. Rand
Date:	August 7, 2001	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (S990-CSRO-39[v.1])		Committee Counsel

SUMMARY: ***The Second Edition of Senate Bill 990 would prohibit persons who contract with local boards of education from using student information obtained incident to its performance under the contract for commercial purposes without authorization from parents to be able to use the information.***

The Proposed House Committee Substitute adds two sections to the bill which would authorize local boards of education to formulate emergency response plans in closed session and make those plans confidential by removing them from the definition of a public record.

CURRENT LAW: In addition to privacy protections provided under Federal law, current law makes a student official record not a public record. There is no specific prohibition or protection against disclosing information on students collected by private contractors who obtain information on students while fulfilling their contracts with the schools.

BILL ANALYSIS: Senate Bill 990 would prohibit a person that contracts with the schools from selling or marketing information obtained about students while performing its contract with the schools without the authorization of the student's parent that the information can be used.

Violation would be a Class 2 misdemeanor. Generally, the minimum punishment for a Class 2 misdemeanor, assuming no prior convictions, is 1-30 days of community punishment or a fine no greater than $1000, or both. However, for violations of this new section, if the defendant is a corporation, unincorporated association, partnership, body politic, consortium, or other group, entity, or organization, the fine would be $5,000 for the first violation, $10,000 for a second violation, and $25,000 for a third or subsequent violation.

The Proposed Committee Substitute adds a provision to the Public Meetings Law, which would authorize local boards of education to formulate emergency response plans to incidents of school violence in closed session. It also adds a provision to the powers and duties of local board of education authorizing the adoption of emergency response plans relating to incidents of school violence, and excluding these plans from the definition of a public record under the Public Records law.

BACKGROUND: Apparently some computer Internet educational software vendors have been collecting information on students based on their use of educational software they are providing to the schools and have been selling or using this information for business or marketing purposes.

EFFECTIVE DATE: The bill would become effective when it becomes law and Section 1 would apply to contracts entered on or after that date.

O. Walker Reagan, and Robin Johnson contributed to this summary. (S990-SMRO-001)

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 990 A BILL TO BE ENTITLED AN ACT TO PROHIBIT PERSONS CONTRACTING WITH THE PUBLIC SCHOOLS FROM DISCLOSING INFORMATION ABOUT STUDENTS FOR A BUSINESS PURPOSE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House Committee Substitute Bill, ☒ which changes the title, unfavorable as to Senate Committee Substitute Bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

August 14, 2001

The House Committee on Judiciary III met on Tuesday, August 14, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bonner, Capps, Cole, M. Crawford, Daughtry, Ellis, Esposito, Hensley, Jarrell, and Kiser. Representatives Bell and Fox had excused absences. Karen Cochrane-Brown, Committee Counsel was present. Walker Reagan from the Research Division was also present at the meeting. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Linda Garrou was called forward to explain SB 438, A BILL TO BE ENTITLED AN ACT TO ALLOW PRIVATE PROPERTY TO BE DESIGNATED AS A PUBLIC VEHICULAR AREA BY THE PRIVATE PROPERTY OWNER. Representative Barefoot moves to have the PCS before the committee. The motion passes. Ruth Sappie, Legislative Liason for NCDOT, speaks about concerns about the bill. Tim McDowell, NC Independent Colleges and Universities, speaks in favor of the bill. Representative Hensley moves to have an amendment adopted. Motion passes. Representative Esposito makes a motion to give the PCS as amended a favorable report, to give the original bill and unfavorable report, and to re-refer the bill to the Finance committee. Motion passes.

There being no further business, the Chair adjourned the meeting at 12:40 PM.

Respectfully submitted,

Wayne Goodwin
Representative Wayne Goodwin
Chairman

Kristen Corbett
Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

August 14, 2001
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 438 **CLARIFY PUBLIC VEHICULAR AREA**
Senator Linda Garrou

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III
Name of Committee

8/14/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Mcdevitt	NCICU
Matt Osborne	AOC
Sharon Matthews	DOT/DMV
Ruth Sappie	NCDOT
Don Graves	NCDOT
John Phelps	NCLM
Mike Miller	NCTA
DWIGHT EISENHOWER	MILITARY INDUSTRIAL COMPLEX
David Winslow	MADD
SAM JOHNSON	ATTY
ROBERT GLAZER	NCADA
EDDIE CALDWELL	NCSheriffs Assn / NC Law Enf Off Assn

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 438

Judiciary I Committee Substitute Adopted 6/13/01
Finance Committee Substitute Adopted 7/18/01

Short Title: Clarify Public Vehicular Area. (Public)

Sponsors:

Referred to:

March 13, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRIVATE PROPERTY TO BE DESIGNATED AS A PUBLIC VEHICULAR AREA BY THE PRIVATE PROPERTY OWNER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(32) reads as rewritten:

"(32) Public Vehicular ~~Area. Any~~ Area. –

a. Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises ~~of:~~of any of the following:

~~a.~~1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its ~~subdivisions; or~~subdivisions.

~~b.~~2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the ~~public; or~~public.

~~c.~~3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. ~~The term "public vehicular area" shall also include any~~ Any beach area used by the public for vehicular ~~traffic as well as any~~ traffic.

c. Any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the ~~public. The term "public vehicular area" shall not be construed to mean~~ public, but excluding any private property not generally open to and used by the public.

d. Any portion of private property used for vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4."

SECTION 2. Article 7 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.4. Public vehicular area designated.**

(a) A private property owner may designate any area used for vehicular traffic as a public vehicular area by registering the area with the Department of Transportation and by erecting signs identifying the area as a public vehicular area in conformity with rules adopted by the Department of Transportation.

(b) The Department of Transportation shall serve as a registry for registrations of private vehicular areas permitted under this section. The Department shall adopt rules for registration requirements and procedures. The Department shall also adopt rules governing the size and locations of signs designating public vehicular areas by private property owners in accordance with this section. These rules shall insure that signs erected pursuant to this provision shall be placed so as to provide reasonable notice to motorists.

(c) The Department shall charge a fee not to exceed five hundred dollars ($500.00) per registration request authorized by this section. The Department may also charge the reasonable cost for furnishing a certified copy of a registration when requested. Funds collected under this subsection shall be used to cover the cost of maintaining the registry."

SECTION 3. G.S. 136-91(b) reads as rewritten:

"(b) As used in this section:

(1) "Highway" shall be defined as it is in ~~Article 3 of Chapter 20;~~ G.S. 20-4.01; and

(2) "Public vehicular area" shall be defined as ~~any driveway, roadway, parking lot, or other public or private area open to the public, or a segment of the public, for vehicular traffic or parking.~~ it is in G.S. 20-4.01."

SECTION 4. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 438
Judiciary I Committee Substitute Adopted 6/13/01
Finance Committee Substitute Adopted 7/18/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S438-CSRV-27 [v.3]

8/13/2001 4:57:05 PM

Short Title: Clarify Public Vehicular Area. (Public)

Sponsors:

Referred to:

March 13, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRIVATE PROPERTY TO BE DESIGNATED AS A PUBLIC VEHICULAR AREA BY THE PRIVATE PROPERTY OWNER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(32) reads as rewritten:

"(32) Public Vehicular Area. – Any area within the State of North Carolina that ~~is generally~~ meets one or more of the following requirements:

a. The area is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises ~~of:~~of any of the following:

~~a.~~1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its ~~subdivisions; or~~subdivisions.

~~b.~~2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the ~~public; or~~public.

~~c.~~3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. ~~The term "public vehicular area" shall also include any~~ The area is a beach area used by the public for vehicular ~~traffic as well as any~~ traffic.

c. The area is a road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the ~~public. The term "public vehicular area" shall not be construed to mean~~ public, but excluding any private property not generally open to and used by the public.

d. The area is a portion of private property used for vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4."

SECTION 2. Article 7 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.4. Public vehicular area designated.**

(a) Any area of private property used for vehicular traffic may be designated by the property owner as a public vehicular area by registering the area with the Department of Transportation and by erecting signs identifying the area as a public vehicular area in conformity with rules adopted by the Department of Transportation.

(b) The Department of Transportation shall serve as a registry for registrations of public vehicular areas permitted under this section. The Department shall adopt rules for registration requirements and procedures. The Department shall also adopt rules governing the size and locations of signs designating public vehicular areas by private property owners in accordance with this section. These rules shall insure that signs erected pursuant to this provision shall be placed so as to provide reasonable notice to motorists.

(c) The Department shall charge a fee not to exceed five hundred dollars ($500.00) per registration request authorized by this section. The Department may also charge the reasonable cost for furnishing a certified copy of a registration when requested. Funds collected under this subsection shall be used to cover the cost of maintaining the registry."

SECTION 3. G.S. 136-91(b) reads as rewritten:

"(b) As used in this section:

(1) "Highway" shall be defined as it is in ~~Article 3 of Chapter 20;~~ G.S. 20-4.01; and

(2) "Public vehicular area" shall be defined as ~~any driveway, roadway, parking lot, or other public or private area open to the public, or a segment of the public, for vehicular traffic or parking.~~ it is in G.S. 20-4.01."

SECTION 4. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 438:
Clarify Public Vehicular Area

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Garrou
Date:	August 14, 2001	**Summary by:**	Brenda J. Carter
Version:	PCS to 3rd Edition {CSRV-26}		Committee Co-Counsel

SUMMARY: ***Senate Bill 438 would allow a private property owner to designate any area used for vehicular traffic as a 'public vehicular area' subject to the State's motor vehicle law. The new procedure would allow an owner of the property to register the area with the Department of Transportation and erect signs identifying the area as a public vehicular area (PVA). DOT is authorized to assess a $500 fee for each registration request. The proposed committee substitute makes technical and style changes in the way the definition is formatted in Section 1 of the bill, and clarifies that a PVA may be designated by the owner of the private property.***

CURRENT LAW: The current definition of 'public vehicular area' in G.S. 20-4.01(32) excludes private property "not generally open to and used by the public." In some cases involving the offense of driving while impaired, courts have interpreted this sentence to prevent conviction when the offense occurred on roads within private property, even though the property was normally open to the public. The reasoning is that an area does not meet the definition of a PVA if the private property involved is periodically subject to restricted access. In particular, there was a case at Wake Forest University where a judge determined that a campus road was not a PVA because there were times when access to the road was gate-limited and the road had speed-reducing devices in place.

This issue has been dealt with in the past in private residential communities (such as Seven Lakes, Bermuda Run, Lake Royale) through the enactment of local bills that declared the provisions of Chapter 20 to be applicable in the specified areas. This bill creates a process that would eliminate the necessity for this type of local legislation.

BILL ANALYSIS: Senate Bill 438 provides a mechanism whereby private property owners who so desire may have their private streets or roadways treated as public vehicular areas, and therefore subject to State motor vehicle laws. The bill would allow a private property owner to designate a portion of the private property that is used for vehicular traffic as a public vehicular area (PVA) by registering with DOT and posting signs to inform motorists that the area is a PVA subject to State motor vehicle laws. The bill is intended to cover roads on private property, even where there are access gates or an on-duty guard controlling access during certain hours, as long the property is registered and signs have been erected.

DOT will establish specifications for the signs, and may charge a fee of up to $500 for each registration request. DOT is also authorized to charge reasonable costs for furnishing a certified copy of a registration when requested.

Section 3 of the bill also makes a necessary conforming change by updating the definition of public vehicular area in another statute.

The act would become effective December 1, 2001, and apply to offenses committed on or after that.

S438-SMRV-001

Al Andrews and Cindy Avrette contributed to this summary

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 17, 2001

TO: The Senate Finance Committee

FROM: Evan Rodewald
Fiscal Research Division

RE: Senate Bill 438 Clarify Public Vehicular Area (PCS)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: December 1, 2001

BILL SUMMARY: Senate Bill 438 provides a mechanism whereby private property owners who desire to have their private streets or roadways treated as public vehicular areas, and therefore subject to State motor vehicle laws, may do so by registering the area with the Department of Transportation and erecting signs identifying the area as a public vehicular

area (PVA). The cost of registering the property with DOT would be up to $500 per request. The property owner would be responsible for obtaining signs that meet the specifications established by DOT and for placing those signs in locations that provide reasonable notice to motorists that the roadway is a PVA. The bill also authorizes DOT to charge the reasonable cost for furnishing a certified copy of a registration when requested.

ASSUMPTIONS AND METHODOLOGY: The Department of Transportation has no way of estimating the number of private property owners that would register private roadways as public vehicular areas. However, because the bill allows DOT to charge fees to cover the costs of administering the PVA registration process, the bill should pose no fiscal burden on the Department of Transportation or the Highway Fund.

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE yes

Rep.)
) Hensley
Sen.)

1 moves to amend the bill on page 2, line 7-10
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to read:
4
5 " have been offered for dedication to the public. ~~The~~
6 ~~term "public vehicular area" shall not be construed~~
7 ~~to mean any private property not generally open~~
8 ~~and used by the public.~~ "
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SIGNED R J Hensley

ADOPTED _____ FAILED _____ TABLED _____

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 438 A BILL TO BE ENTITLED AN ACT TO ALLOW PRIVATE PROPERTY TO BE DESIGNATED AS A PUBLIC VEHICULAR AREA BY THE PRIVATE PROPERTY OWNER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to House Committee Substitute Bill, unfavorable as to Senate Committee Substitute Bill, and recommendation that the House Committee Substitute Bill be re-referred to the Committee on Finance.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

August 16, 2001

The House Committee on Judiciary III met on Thursday, April 16, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Representatives Bell, Bonner, M. Crawford, Esposito, Ellis, Fox, Hensley, Jarrell, Kiser, and Weatherly. Representatives Barefoot and Daughtry had excused absences. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Brad Miller was called forward to explain SB 866, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT. Representative Ellis moves to have the PCS before the committee. Motion passes. Representative Ellis moves for a favorable report to the PCS, unfavorable to original bill. Ed Turlington, representing INCEDA, and Gretchen Aycock from the Governor's Council for Person's with Disabilities speak in favor of the bill. Representative Ellis' motion passes.

Senator Tony Rand is called forward to explain SB 646, A BILL TO BE ENTITLED AND ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, OR TO OBSTRUCT, DELAY, TEASE, OR HARASS THE ANIMAL IN THE PERFORMANCE OF ITS DUTIES AS A LAW ENFORCEMENT AGENCY ANIMAL OR ASSISTANCE ANIMAL. Representative Hensley moves to have the PCS before the committee. The motion passes. Representative Billy Creech speaks in favor of the bill. Jack Cozort, representing the NC Organization for Animals speaks for the bill. Representative Esposito moves for a favorable report to the PCS and an unfavorable report to the original bill. The motion passes.

There being no further business, the Chair adjourned the meeting at 12:46 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

August 16, 2001
Room 421 LOB
15 Minutes after Session

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 646	**HARM OR HINDER LAW OR ASSISTANCE ANIMALS** **Senator Tony Rand**
SB 866	**PERSONS WITH DISABILITIES CHANGES-AB** **Senator Brad Miller**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

8/16/01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gretchen Aycock	GACFD 2113 Cameron St. Raleigh
MT Burdett	" "
Martha Glass	DOA
John Phelps	NCLM
Ed Turlington	Brooks, Pierce
Jack Cozort	Parker Poe
Brian Distelberg	senate intern
JE Hobbs	NCHMA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 866

Judiciary II Committee Substitute Adopted 4/24/01
Third Edition Engrossed 4/25/01

Short Title: Persons With Disabilities Changes-AB. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-2(a) reads as rewritten:

"(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State."

SECTION 2. G.S. 168A-3 reads as rewritten:

"**§ 168A-3. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(1) 'Disabling condition' means any condition or characteristic that renders a person a person with a disability.

(1a) 'Discriminatory practice' means any practice prohibited by this Chapter.

(2) 'Employer' means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) 'Employment agency' means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as § 168A-3(7).

(4a) 'Information technology' has the same meaning as in G.S. 147-33.81. The term also specifically includes information transaction machines.

(5) Recodified as § 168A-3(1).

(6) 'Labor organization' means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) 'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) 'Person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. 'Physical or mental impairment' means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. 'Is regarded as having an impairment' means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) 'Place of public accommodations' includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person. This includes equivalent services provided via information technology.

(9) 'Qualified person with a disability' means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) 'Reasonable accommodations' means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that 'reasonable accommodation' does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or
2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or
3. Reassign duties of the job in question to one or more other employees where such reassignment would

increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or

4. Alter, modify, change or deviate from bona fide seniority policies or practices; or

5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or

~~6. Make physical changes to accommodate a person with a disability where:~~

~~I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or~~

~~II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or~~

~~7.~~6. Make any changes that would impose on the employer an undue ~~hardship, provided that the costs of less than five percent (5%) of an employee's salary or annualized wage as determined in subsection (6) above shall be presumed not to be an undue hardship.~~hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) 'Undue hardship' means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.

b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.

c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.

d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity; the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity."

SECTION 3. This act becomes effective October 1, 2001. The provisions of G.S. 168A-7(b) apply to information technology placed into service on or after July 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 866

Judiciary II Committee Substitute Adopted 4/24/01
Third Edition Engrossed 4/25/01
House Committee Substitute Favorable 7/26/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S866-CSRV-26 [v.5]

8/8/2001 12:36:25 PM

Short Title: Persons with Disabilities Changes-AB. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT AND TO REQUIRE THE JOINT SELECT COMMITTEE ON INFORMATION TECHNOLOGY TO STUDY AND MAKE RECOMMENDATIONS REGARDING THE ACCESSIBILITY OF SERVICES PROVIDED VIA INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 168A-2(a) reads as rewritten:

"(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State."

SECTION 2. G.S. 168A-3 reads as rewritten:

"**§ 168A-3. Definitions.**

As used in this Chapter, unless the context otherwise requires:

(1) 'Disabling condition' means any condition or characteristic that renders a person a person with a disability.

(1a) 'Discriminatory practice' means any practice prohibited by this Chapter.

(2) 'Employer' means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) 'Employment agency' means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as § 168A-3(7).

(5) Recodified as § 168A-3(1).

(6) 'Labor organization' means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) 'Person' includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) 'Person with a disability' means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. 'Physical or mental impairment' means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. 'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. 'Has a record of such an impairment' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. 'Is regarded as having an impairment' means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits

major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) 'Place of public accommodations' includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) 'Qualified person with a disability' means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) 'Reasonable accommodations' means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that 'reasonable accommodation' does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or

2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or

3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or

4. Alter, modify, change or deviate from bona fide seniority policies or practices; or

5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or

~~6. Make physical changes to accommodate a person with a disability where:~~

~~I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or~~

~~II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or~~

~~7.~~6. Make any changes that would impose on the employer an undue ~~hardship, provided that the costs of less than five percent (5%) of an employee's salary or annualized wage as determined in subsection (6) above shall be presumed not to be an undue hardship.~~hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) 'Undue hardship' means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.

b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.

c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.

d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity; the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity."

SECTION 3. G.S. 168A-7 reads as rewritten:

"**§ 168A-7. Discrimination in public service.**

(a) It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations do not impose an undue hardship on the entity involved.

(b) A State department, institution, or agency, any political subdivision of the State, and any person that contracts with these entities for the delivery of public services shall administer its services, programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities."

SECTION 4. Chapter 168A of the General Statutes is amended by adding a new section to read:

"**§ 168A-10.1. Dispute resolution in public services discrimination cases.**

The North Carolina Office on the Americans with Disabilities Act shall adopt rules to provide a consistent and comprehensive mechanism for accommodating requests regarding accessibility to public services, and shall adopt dispute resolution procedures to govern responsiveness to those requests. This section does not authorize the North Carolina Office on the Americans with Disabilities Act to adopt rules or procedures that apply to the resolution of matters constituting grounds for a contested case under Chapter 126 of the General Statutes."

SECTION 5. The Joint Select Committee on Information Technology shall study the question of whether the North Carolina Persons with Disabilities Protection Act should be amended to specifically apply to services provided via information

technology. The Committee shall review the report of the IRMC's Accessibility Work Group and shall consider such other information as it may deem pertinent. The Committee shall include its findings as a part of its March 1, 2002 report.

SECTION 6. Section 5 of this act is effective when the act becomes law. The remainder of this act becomes effective October 1, 2001.

SENATE BILL 866:
Persons with Disabilities Changes-AB

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Senator Miller
Date:	August 16, 2001	**Summary by:**	Brenda J. Carter
Version:	S866-CSRV-26		Committee Counsel

SUMMARY: ***Senate Bill 866 amends North Carolina's Persons with Disabilities Protection Act to conform to recent federal regulations regarding use of integrated settings for people with disabilities and make other changes that parallel the federal ADA. This proposed committee substitute deletes the section of the bill that would have specified that information technology is covered by the scope of the Persons with Disabilities Protection Act, and deletes a provision designating the North Carolina Office on the ADA as the appropriate State agency to coordinate and develop a unified State standard of review for information technology accessibility. The proposed committee substitute requires that the Joint Select Committee on Information Technology study the accessibility of services provided via information technology and report its findings by March 1, 2002.***

CURRENT LAW: In 1985, the General Assembly enacted the "Handicapped Persons Protection Act", renamed in 1999 as the "Persons with Disabilities Act." The act provides that State and local governments and any employer of 15 or more full-time employees may not discriminate against a qualified person with a disability in employment, public accommodations, public services, or public transportation. A **"qualified person with a disability"** is one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having an impairment, and who can satisfactorily perform job duties with or without reasonable accommodation. **"Reasonable accommodation"** is defined as an accommodation that does not require physical changes to the workplace that cost more than 5% of the employee's annual salary. The act also provides for a disabled person alleging discrimination to sue in superior court for declaratory relief, injunctive relief for employment or reinstatement, back pay for the two years before the suit is brought, and reasonable attorney's fees.

BILL ANALYSIS:

Section 1 of the bill amends the "Statement of Purpose" of the Act by adding language designed to reflect the intent of the U.S. Supreme Court in Olmstead v. L.C., where the Court held that persons with disabilities are entitled to services provided in the least restrictive environment appropriate. This language adds that among the purposes of the Act is to **"ensure equality of opportunity, to promote independent living and economic self-sufficiency."**

Section 2 of the bill amends the current standard used to determine whether an accommodation provided by an employer is "reasonable". Under current North Carolina law, an employer is **not** required to make changes in the workplace to accommodate a disabled employee if the costs would exceed 5% of the employee's annual salary. This formula was developed prior to the enactment of and is inconsistent with the ADA. This section of the bill adopts the **"undue hardship"** language found in the ADA, and provides that an employer would not be required to make any accommodations constituting an "undue hardship." This is defined as a significant difficulty or expense and consists of several factors to be weighed in making this determination, including the cost, the overall financial resources of the employer, the number of employees at the facility, the type of operations at the facility, and any other impact on the employer's facility.

Section 3 of the bill requires State entities to administer its programs in the most integrated setting appropriate to the needs of persons with disabilities.

Section 4 of the bill directs the State Office on the ADA to adopt rules providing dispute resolution processes for accommodating accessibility requests. The proposed committee substitute specifically excludes matters that constitute grounds for a contested case under the State Personnel Act (Chapter 126 of the General Statutes).

Section 5 of the bill directs the Joint Select Committee on Information Technology to study the question of whether the Persons with Disabilities Protection Act should be amended to specifically apply to services provided via information technology and report its findings by March 1, 2002.

Section 6 of the bill makes the provision regarding the authority of the Joint Select Committee on Information Technology effective when the bill becomes law. The remainder of the act becomes effective October 1, 2001.

BACKGROUND:

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed July 26, 1990 and became effective on January 26, 1992. The law was written to strike a balance between the reasonable accommodation of citizens' needs and the capacity of private and public entities to respond. It was intended to eliminate illegal discrimination and level the playing field for disabled individuals. The law is comprised of five titles that prohibit discrimination against disabled persons within the United States.

Title I prohibits employers, including cities and towns, from discriminating against qualified job applicants and workers who are or who become disabled. The law covers all aspects of employment including the application process and hiring, training, compensation, advancement, and any other employment term, condition, or privilege.

Title II prohibits state and local governments from discriminating against disabled persons in their programs and activities. Title II also sets forth the applicable structural accessibility requirements for public entities.

Title III prohibits private enterprises that provide public accommodations and services (e.g., hotels, restaurants, and transit systems) from denying goods, services and programs to people based on their disabilities. Title III also sets forth the applicable structural accessibility requirements for private entities.

Title IV makes available telecommunications devices and services for the hearing and speech impaired. These regulations spell out certain mandatory minimum standards telephone companies must maintain to be in compliance with the ADA.

Title V includes some miscellaneous provisions that relate to the construction and application of the ADA, including alternative dispute resolution.

Recent U.S. Supreme Court Decisions

In **Olmstead v. L.C. (1999)**, the Supreme Court ruled that the ADA's "most integrated setting appropriate" mandate requires States to avoid undue institutionalization of people with disabilities. The Court upheld the ruling of the U.S. Court of Appeals for the Eleventh Circuit that Georgia may have violated the ADA by confining two individuals with mental disabilities in an institution rather than providing services through a community-based program as recommended by the State's treating professionals. In finding that unjustified isolation is a form of discrimination under the ADA, the Court pointed to the stigma of unworthiness, and the unequal access to family and social interaction, employment, education, and cultural enrichment that result from unnecessary institutionalization. According to the Court, an institutional placement is unjustified when the State's treatment professionals have determined that community placement is appropriate, the individual does not oppose the transfer, and the placement can be accomplished without fundamentally altering the State's program. In applying the fundamental alteration defense, courts are to consider not only the expense of providing community-based care to the plaintiffs in a particular case, but also the "need to maintain a range of facilities for the care and treatment of persons with diverse disabilities" and "the States' obligation to administer services with an even hand."

The case of **University of Alabama v. Garrett (2001)** grew out of two separate lawsuits filed by employees against units of Alabama state government. In one, a registered nurse, Patricia Garrett, sued the university of Alabama Hospital for demoting her when she returned to work after treatment for breast cancer. In the other lawsuit, a security officer, Milton Ash, sued the state's Department of Youth Services for failing to arrange his work conditions to accommodate his chronic asthma and other medical problems. The Supreme Court held that state workers are barred from filing employment discrimination lawsuits against their employers under the ADA because Congress failed to override states' 11th Amendment immunity against being sued in federal courts when it enacted the ADA.

The Supreme Court will soon consider whether to take up a state immunity claim under the section of the ADA that requires government agencies to makes their service, programs, and activities accessible to people with disabilities. Under the analysis of Garrett, it is possible that the Court would find the states immune from suit under this section as well as the employment section.

S866-SMRV-002
**Trina Griffin, Counsel to Senate Judiciary II, contributed to this summary*

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S. B. 866 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE PERSONS WITH DISABILITIES PROTECTION ACT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House Committee Substitute Bill (# 2), ☒ which changes the title, unfavorable as to House Committee Substitute Bill (# 1).

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
S.B. 646 A BILL TO BE ENTITLED AN ACT TO MAKE IT A CRIMINAL OFFENSE TO HARM OR ATTEMPT TO HARM A LAW ENFORCEMENT AGENCY ANIMAL OR AN ASSISTANCE ANIMAL, TO OBSTRUCT OR DELAY THE ANIMAL IN THE PERFORMANCE OF ITS OFFICIAL DUTIES, OR TO TEASE OR HARASS THE ANIMAL.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill, ☒ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

August 28, 2001

The House Committee on Judiciary III met on Tuesday, August 28, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Ellis, Esposito, Fox, Jarrell, Kiser, and Russell. Dianna Jessup and Karen Cochrane-Brown, Committee Counsel were present. Erika Churchill from the Research Dept. was also present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Rex Baker is called forward to explain HB 115, A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS AND CONFLICTS OF INTEREST. Senator Fletcher Hartsell speaks about the changes added to the bill in the Senate. Leanne Winner from the NC School Boards Association, Andy Romanay from the League of Municipalities and Hugh Tillitson from the NC Hospital Association all speak for the bill. Representative Daughtry makes a motion that the committee recommends to concur with the bill. The motion passes.

There being no further business, the Chair adjourned the meeting at 12:35 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

August 28, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 115 **PUBLIC CONFLICTS OF INTEREST**
Representative Rex Baker

ADJOURNMENT

VISITOR REGISTRATION SHEET

J3
Name of Committee

8/28/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Etheridge Davis	ElectriCities
Hugh Wilson	NCHA
Leanne Winner	NCSBA
DON FLOWERS	SOTA
Andy Romanet	NCAM
Mark Mayer	NCACC
Ed Regan	NC ACC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 5

HOUSE BILL 115

Committee Substitute Favorable 3/01/01
Third Edition Engrossed 3/6/01
Senate Judiciary I Committee Substitute Adopted 8/7/01
Fifth Edition Engrossed 8/14/01

Short Title: Public Conflicts of Interest. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS AND CONFLICTS OF INTEREST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-234 reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.~~Director of public trust contracting for his own benefit; participation in business transaction involving public funds; exemptions.~~**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

~~If any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a~~

~~misdemeanor. Provided, that this section shall not apply to public officials transacting business with banks or banking institutions or savings and loan associations or public utilities regulated under the provisions of Chapter 62 of the General Statutes in regular course of business: Provided further, that such undertaking or contracting shall be authorized by said governing board by specific resolution on which such public official shall not vote.~~

(a1) For purposes of this section:

(1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

(2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.

(3) A public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.

(4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.

(5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

(b) Subdivision (a)(1) of this section does not apply to any of the following:

(1) Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.

(2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.

(3) Any employment relationship between a public agency and the spouse of a public officer of the agency.

(4) ~~Nothing in this section nor in any general principle of common law shall render unlawful the acceptance of remuneration~~ Remuneration from a ~~governmental board,~~ public agency ~~or commission~~ for services, facilities, or supplies furnished directly to needy individuals by ~~a~~

~~member of said board, agency or commission~~ a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by ~~such board,~~ the agency ~~or commission; provided, however, that such~~ if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; ~~and provided further that the board,~~ (ii) neither the agency ~~or commission,~~ nor any of its employees or agents, ~~shall~~ have ~~no~~ control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the ~~assistance, and that~~ assistance; (iii) the remuneration for ~~such~~ the services, facilities or supplies ~~shall be~~ are in the same amount as would be paid to any other provider; and (iv) ~~provided further that,~~ although the ~~board, agency or commission member~~ public officer or employee may participate in making determinations of eligibility of needy persons to receive the assistance, he or she ~~shall take~~ takes no part in approving his or her own bill or claim for remuneration.

(b1) No public officer who will derive a direct benefit from a contract entered into under subsection (b) of this section may deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

~~(c) No director, board member, commissioner, or employee of any State department, agency, or institution shall directly or indirectly enter into or otherwise participate in any business transaction involving public funds with any firm, corporation, partnership, person or association which at any time during the preceding two-year period had a financial association with such director, board member, commissioner or employee.~~

~~(c1) The fact that a person owns ten percent (10%) or less of the stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of said corporation or other business entity does not make the person "in any manner interested" or "concerned or interested in making such contract, or in the profits thereof," as such phrase is used in subsection (a) of this section, and does not make the person one who "had a financial association," as defined in subsection (c) of this section; provided that in order for the exception provided by this subsection to apply, such undertaking or contracting must be authorized by the governing board by specific resolution on which such public official shall not vote.~~

~~(d) The provisions of subsection (c) shall not apply to any transactions meeting the requirements of Article 3, Chapter 143 of the General Statutes or any other transaction specifically authorized by the Advisory Budget Commission.~~

(d1) ~~The first sentence of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (ii) any elected official or person appointed to

fill an elective office of a county within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than ~~7,500~~15,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than ~~7,500~~15,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital ~~if:~~if all of the following apply:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting,. and recorded in its minutes and the amount does not exceed ~~ten thousand dollars ($10,000)~~ twelve thousand five hundred dollars ($12,500) for medically related services and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) for other goods or services within a 12-month ~~period; and~~period.

(2) The official entering into the contract ~~or undertaking~~ with the unit or agency does not ~~in his official capacity~~ participate in any way or ~~vote; and~~vote.

(3) The total annual amount of ~~undertakings or~~ contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or ~~county; and~~county.

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which ~~undertakes or~~ contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such ~~undertakings or~~ contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly.

(d2) ~~The provision of subsection~~Subsection (d1) ~~shall~~ of this section does not apply to contracts ~~required by~~ that are subject to Article 8 of Chapter 143 of the General Statutes, Public Building Contracts.

(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met.

(d4) Subsection (a) of this section does not apply to an application for, or the receipt of a grant or other financial assistance from, the Tobacco Trust Fund created under Article 75 of Chapter 143 of the General Statutes by a member of the Tobacco Trust Fund Commission or an entity in which a member of the Commission has an interest provided that the requirements of G.S. 143-717(g) are met.

(d5) This section does not apply to a public hospital subject to G.S. 131E-14.2 or a public hospital authority subject to G.S. 131E-21.

(e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public agency that is a party to the contract may request approval to continue contracts under this subsection as follows:

(1) Local governments, as defined in G.S. 159-7(15), public authorities, as defined in G.S. 159-7(10), local school administrative units, and community colleges may request approval from the chairman of the Local Government Commission.

(2) All other public agencies may request approval from the State Director of the Budget.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare."

SECTION 2. G.S. 14-236 is repealed.

SECTION 3. G.S. 14-237 is repealed.

SECTION 4. G.S. 115C-48(a) reads as rewritten:

"(a) Members of local boards of education are criminally liable for certain conduct as provided in G.S. 14-234.~~G.S. 14-234 through 14-237.~~"

SECTION 5. G.S. 115D-26 reads as rewritten:

"**§ 115D-26. Conflict of interest.**

All local trustees and employees of community colleges covered under this Chapter ~~must adhere~~ are subject to the conflict of interest provisions found in G.S. 14-234.~~G.S. 14-236.~~"

SECTION 6. Part A of Article 2 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-14.2. Conflict of interest.**

(a) No member of the board of directors or employee of a public hospital, as defined in G.S. 159-39(a), or that person's spouse shall do either of the following:

(1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility.

(2) Have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. This restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business provided that the contract, undertaking, or other transaction shall be authorized by the board by specific resolution on which no director having an interest, direct or indirect, shall vote.

(b) The fact that a person or that person's spouse owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the person have an "interest, direct or indirect" as this phrase is used in subsection (a) of this section; provided that, in order for the exception to apply, the contract, undertaking, or other transaction shall be authorized by the board of directors by specific resolution on which no director or employee having an interest, direct or indirect, shall vote.

(c) If a member of the board of directors or an employee of a public hospital or that person's spouse owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the member of the board of directors or the employee shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. Failure to disclose shall constitute misconduct in office and shall be grounds for removal.

(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting and recorded in its minutes and the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or services within a 12-month period; and (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote.

(e) Subsection (a) of this section shall not apply to any employment relationship between a public hospital and the spouse of a member of the board of directors of the public hospital.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public hospital that is a

party to the contract may request approval to continue contracts under this subsection from the chairman of the Local Government Commission. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare."

SECTION 7. G.S. 131E-21 reads as rewritten:

"**§ 131E-21. Conflict of interest.**

(a) No commissioner or employee of the hospital authority or that person's spouse ~~shall:~~shall do either of the following:

(1) Acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital ~~facility; or~~facility.

(2) Have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. The foregoing restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business; Provided that any such contract, undertaking, or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner having an interest, direct or indirect, shall vote.

(b) The fact that a person or that person's spouse owns ten percent (10%) or less stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of that corporation or other business entity does not make the person have an "interest, direct or indirect" as this phrase is used in ~~subsections (1) and (2)~~ subsection (a) of ~~the~~this section; provided that, in order for the exception to apply, the contract, undertaking or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner or employee having an interest, direct or indirect, shall vote.

(c) If a commissioner or employee of an authority or that person's spouse owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the commissioner or employee shall immediately disclose the same in writing to the authority and the disclosure shall be entered upon the minutes of the authority. Failure to disclose shall constitute misconduct in office and shall be grounds for a commissioner's removal from office under G.S. 131E-22.

(d) Subsection (a) of this section shall not apply to any commissioner of a hospital authority if (i) the undertaking or contract or series of undertakings or contracts between the hospital authority and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting and recorded in its minutes and the amount does not exceed twelve thousand five hundred dollars ($12,500) for medically related services and twenty-five thousand dollars ($25,000) for other goods or services within a 12-month period; and (ii) the official entering into the

contract or undertaking with the hospital authority does not in an official capacity participate in any way or vote.

(e) Subsection (a) of this section shall not apply to any employment relationship between a hospital authority and the spouse of a commissioner of the hospital authority.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A hospital authority that is a party to the contract may request approval to continue contracts under this subsection from the chairman of the Local Government Commission. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare."

SECTION 8. G.S. 153A-44 reads as rewritten:

"**§ 153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving ~~his~~ the member's own financial interest or ~~his~~ official ~~conduct.~~ conduct or on matters on which the member is prohibited from voting under G.S. 14-234. ~~(For~~ For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official ~~conduct.)~~conduct."

SECTION 9. G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of ~~his~~ the member's own financial interest or official ~~conduct.~~ conduct or on matters on which the member is prohibited from voting under G.S. 14-234. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in ~~issue (including~~ issue, including the mayor's vote in case of an equal ~~division)~~ division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats ~~(not~~ and not including the mayor unless ~~he~~ the mayor has the right to vote on all questions before the ~~council).~~ council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 10. Section 10 and G.S. 14-234(d1), as rewritten in Section 1 of this act, are effective April 1, 2001, and apply to actions taken and offenses committed on or after that date. The remainder of this act becomes effective July 1, 2002, and

applies to actions taken and offenses committed on or after that date. Prosecutions for offenses committed before the effective dates of the provisions of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 115:
Public Conflicts of Interest.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Baker
Date:	August 28, 2001	**Summary by:**	Dianna W. Jessup
Version:	Fifth Edition (for concurrence)		Staff Counsel

SUMMARY: ***House Bill 115 would rewrite the criminal self-dealing statutes governing public officers.***

BILL ANALYSIS:

Section 1. Currently, G.S. 14-234 sets forth the prohibitions, and the exemptions from those prohibitions, on a public officer in dealing with the governmental entity that the officer serves. Section 1 would raise the population caps and the monetary caps set forth in a limited exemption allowing elected officers and specified appointed officers to enter into contracts with the board on which the officer serves, provided the contract is not subject to Article 8 of Chapter 143. Section 1 would also rewrite the provisions of G.S. 14-234 to clarify the statute. The changes are set forth in the table below:

Changes to G.S. 14-234

	Current Law	Effect of H115 (new provisions in bold)
Prohibitions	A person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested who becomes an undertaker, or makes any contract for his own benefit, under such authority, or is in any manner concerned or interested in making such contract (or in the profits) either privately or openly, singly or jointly with another is guilty of a misdemeanor. G.S. 14-234(a)	• Public officer or employee who is involved in making or administering a contract may not derive a benefit from the contract, unless there is an exception provided by law. • Public officer or employee who will derive a benefit from a contract with the public agency served may not attempt to influence any person involving in making or administering the contract. • Public officer or employee may not solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract. (Page 1, lines 9-21)
Persons Affected	Person appointed or elected a commissioner or director. G.S. 14-234(a)	Public officer or **employee, or that person's spouse.** (Page 2, line 23)
Statewide Exemptions (Applicable if official does not vote on the contract.)	• Contracts with banks, banking institutions or savings and loan associations, or with public utilities. G.S. 14-234(a) • Contracts for services or facilities or supplies furnished under public assistance programs. G.S. 14-234(b) • Grants under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, under specified conditions. G.S. 14-234(d3) • Grants from the Tobacco Trust Fund. G.S. 14-234(d4)	• Contracts with banks, banking institutions or savings and loan associations, or with public utilities.(Page 2, line 31) • Contracts for services or facilities or supplies furnished under public assistance programs. (Page 2, line 40) • Grants under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, under specified conditions. (Page 5, line 4) • Grants from the Tobacco Trust Fund. (Page 5, line 10) • **Property conveyed under a public**

		condemnation. (Page 2, line 34) • **Employment relationship between the public agency and the spouse of the public officer.** (Page 2, line 38) • **Public hospitals subject to G.S. 131E-14.2** (Page 5, line 15) • **Public hospital authority subject to G.S. 131E-21.** (Page 5, line 16)
Limited Exemption based on Population	• Applies to elected offices, including board of education, in cities with populations no more than 7,500. G.S. 14-234(d1) • Applies to elected offices including board of education and selected appointed offices spanning more than one county, in counties in which there is no city with a population greater than 7,500. G.S. 14-234(d1)	• Applies to elected offices, including board of education, in cities with populations no more than **15,000.** (Page 3, line 42) • Applies to elected offices including board of education and selected appointed offices spanning more than one county, in counties in which there is no city with a population greater than **15,000.** (Page 4, line 12)
Conditions of Limited Exemption based on Population	• Contract for medically related services cannot exceed $10,000. G.S. 14-234(d1) • Contract for other goods or services cannot exceed $15,000. G.S. 14-234(d1)	• Contract for medically related services cannot exceed **$12,500.** (Page 4, line 22) • Contract for other goods or services cannot exceed **$25,000.** (Page 4, line 23)
What happens to the contract if there is a violation?	The statute is silent.	**The contract is void. The contract may continue in effect until an alternative can be arranged with the approval of the Local Government Commission or the State Director of the Budget, depending on the unit of government.** (Page 5, line 18)

Sections 2 and 3. Sections 2 and 3 would repeal G.S. 14-236, Acting as Agent for Those Furnishing Supplies for Schools and Other State Institutions, and G.S. 14-237, Buying School Supplies from Interest Officer. The contents of both these statutes would no longer be necessary with the rewrite of G.S. 14-234 in Section 1 of this bill.

Sections 4 and 5. Sections 4 and 5 would correct two cites to reflect the repeal of the statutes in Sections 2 and 3.

Section 6. Section 6 would add a new section regarding conflicts of interest to Part A of Article 2 of Chapter 131E, which governs municipal hospitals. The new section would prohibit the following acts by a member of the board of directors or an employee:

- Acquisition of any interest, direct or indirect, in any hospital facility
- Acquisition of any interest, direct or indirect, of any property included or planned to be included in a hospital facility.
- Possessing any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility. Employment contracts are exempt. Additionally, contracts with banks or banking institutions, savings and loan associations and public utilities in the regular course of business are exempt if the member having an interest does no vote.

To have an interest, direct or indirect, a person would have to own more than 10 % of the stock of a corporation or of the business entity. If the person owns or controls an interest, direct or indirect, in

property included or planned to be included in a hospital facility, then that person must immediately disclose that fact in writing to the board.

Exempt from the prohibitions stated above are contracts for medically related services not more than $12,500 and contracts for other goods or services not more than $25,000, provided the official with the conflict does not in an official capacity participate in any way or vote on the contract.

Contracts in violation of the section are void. The void contract may continue in effect with the approval of the Local Government Commission if the immediate termination would result in harm to the public health or welfare.

Section 7. Section 7 would amend Part B of Article 2 of Chapter 131E, which governs hospital authorities. G.S. 131E-21 would be amended to provide that a contract entered into in violation of that section would be void. The void contract could continue in effect with the approval of the Local Government Commission if the immediate termination would result in harm to the public health or welfare.

Sections 8 and 9. Sections 8 and 9 would clarify that a member of a county board of commissioners or a municipal board of commissioners may be excused from voting when that member is prohibited from voting by G.S. 14-234.

Section 10. Section 10 and G.S. 14-234(d1) (the exemptions) would become effective April 1, 2001. (There is an issue as to whether this retroactive effective date would violate the constitutional prohibition on ex post facto laws). The remainder of the act would become effective July 1, 2002 and apply to acts and offenses committed on or after that date.

Erika Churchill contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
H.B. 115 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING BUSINESS TRANSACTIONS INVOLVING PUBLIC FUNDS AND CONFLICTS OF INTEREST.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☒ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

MINUTES
HOUSE COMMITTEE ON
JUDICIARY III

October 2, 2001

The House Committee on Judiciary III met on Tuesday, October 2, 2001, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Representatives Bell, Bonner, Capps, Cole, M. Crawford, Daughtry, Ellis, Esposito, Fox, and Kiser. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Senator Daniel Clodfelter is recognized to present HB 955, A BILL TO BE ENTITLED AN ACT TO PREVENT THE MISREPRESENTATION OF THE AUTHORITY OF A NOTARY PUBLIC for concurrence. Attorney General Roy Cooper, Matty Lazo-Chadderton, Special Assistant to the President Pro Tem, and Sheila Pope, General Counsel for the Secretary of State all speak for the bill. Representative Ellis makes a motion that the House concur with the Senate changes. The motion passes.

There being no further business, the Chair adjourned the meeting at 12:20 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman

Kristen Corbett
Committee Assistant

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

October 2, 2001
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 955 **NOTARY AUTHORITY MISREPRESENTATION**
Representative Gene Arnold

ADJOURNMENT

VISITOR REGISTRATION SHEET

J-II
Name of Committee

10/2/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William. Polk	DOJ
JAY CHAUDHURI	DoJ
Kathy Lazo-Chadderton	President Pro Tempo's Office
Melinda A. Pope	SOS
Gabriela Zabala	Latino Advocacy
Tara Padilla	Lt Gov office and Edpuebla org.
Deb Ross	Assoc.
Michelle Frazier.	NC Bar Assoc.
Rob Schofield	NC Justice Ctr
Julia White	NC AG's ofc.
Dana Damico	W S Journal
Kristi Hyman	NCDOJ
Roy Cooper	NCDOJ Attorney General

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 3

HOUSE BILL 955

Senate Judiciary I Committee Substitute Adopted 9/18/01
Third Edition Engrossed 9/25/01

Short Title: Notary Authority Misrepresentation. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO PREVENT THE MISREPRESENTATION OF THE AUTHORITY OF A NOTARY PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10A-4(c) reads as rewritten:

"(c) The Secretary may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(4) The applicant knowingly uses false or misleading advertising in which the applicant as a notary represents that the applicant has powers, duties, rights or privileges that the applicant does not possess by law.

(5) The applicant is found by a court of this State or any other state to have engaged in the unauthorized practice of law."

SECTION 2. G.S. 10-9 is amended by adding the following subsections to read:

"(g) A notary public who is not an attorney licensed to practice law in this State who advertises the person's services as a notary public in a language other than English, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in the language used for the advertisement. The notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN

ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(h) A notary public who is not an attorney licensed to practice law in this State is prohibited from representing or advertising that the notary public is an "immigration consultant" or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the Board of Immigration Appeals pursuant to Title 8, Part 292, Section 2(a-e) of the Code of Federal Regulations (8 CFR 292.2(a-e)).

(i) A notary public who is not an attorney licensed to practice law in this State is prohibited from rendering any service that constitutes the unauthorized practice of law.

(j) A notary public required to comply with the provisions of subsection (g) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited, and shall contain the notice required in subsection (g) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 3. G.S. 10A-12 is amended by adding the following subsections to read:

"(f) The Secretary of State, through the Attorney General, may seek injunctive relief against any notary public who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(g) A violation of G.S. 10A-9(h) or (i) constitutes a deceptive trade practice under G.S. 75-1.1."

SECTION 4. The Department of the Secretary of State may study the Notary Public Act, Chapter 10A of the General Statutes, and conforming amendments that may be needed to other sections of the General Statutes, and report any recommendations for changes, including recommended legislation, to the 2002 Regular Session of the 2001 General Assembly.

SECTION 5. This act becomes effective January 1, 2002, and applies to acts committed on or after that date.

HOUSE BILL 955:
Notary Authority Misrepresentation.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Arnold
Date:	October 3, 2001	**Summary by:**	Brenda J. Carter, Committee Co-Counsel
Version:	Third Edition		

BACKGROUND: *When reported out of this committee in April, and as passed by the House, this bill amended the law to validate certain acts and documents that were not notarized in strict compliance with the statutes. The provisions of the 1st edition of the bill were included in House Bill 700, which was signed by the Governor on May 31. House Bill 955 is now before the Committee for concurrence in the Senate committee substitute.*

SUMMARY: House Bill 955 (3rd Edition) would amend the notary public laws to prevent misleading and fraudulent advertising by notaries public and prevent notaries from using their office for the purposes of giving legal or immigration advice, unless otherwise licensed or certified to do so. The bill also addresses the duty of notaries when advertising notary services in a language other than English.

BILL ANALYSIS: House Bill 955 amends the notary public law to address problems that have arisen from confusion of the translation of the words "notary public" into foreign languages, particularly Spanish, which has resulted in the implication that a nonlawyer notary is authorized to give legal or immigration advice. The literal translation of the term "notary public" into the Spanish term "notario publico" gives the misleading impression that the person is an attorney, as this term is applied in many Latin American countries.

Section 1 of the bill prohibits a notary from advertising in a manner that gives a false or misleading impression of the notary's powers and duties. When an applicant knowingly uses false or misleading advertising or when an applicant is found by a court to have engaged in the unauthorized practice of law, the Secretary of State is authorized to deny the person's application for commission or recommission as a notary.

Section 2 of the bill adds provisions to the law governing notary powers and limitations. Subsection (g) requires a nonlawyer notary who advertises notary services in a language other than English, to disclose in English and the foreign language that the notary is not an attorney. Subsection (h) prohibits a nonlawyer notary from representing that the notary is an immigration consultant unless the notary is accredited by the Board of Immigration Appeals. Subsection (i) prohibits a nonlawyer notary from practicing law. Subsection (j) requires a notary who advertises in a foreign language to post a schedule of fees established by law that the notary may charge in both English and the foreign language.

Section 3 authorizes the Secretary of State to seek an injunction for violation of the Notary Public Act and makes it clear that the North Carolina State Bar has the authority to police and enforce the unauthorized practice of law. This section also makes it an unfair or deceptive trade practice for a nonlawyer notary to give immigration or legal advice in violation of the law.

Section 4 authorizes the Secretary of State to study and report to the 2002 Session on other statutory changes that might be needed in the notary law and other related statutes.

Violations of the provisions being added to the law by this bill could result in civil injunctions, loss of the notary commission and claims for treble damages and attorney fees, but would not constitute a criminal violation under the Notary Public Act.

EFFECTIVE DATE: The bill would become effective January 1, 2002 and would apply to acts committed on or after that date.

H955-SMRV-001-V3

Walker Reagan, Co-Counsel to Senate Judiciary 1, contributed substantially to this summary

§ 10A-12. Enforcement and penalties.

(a) Any person who holds himself or herself out to the public as a notary or who performs notarial acts and is not commissioned is guilty of a Class 1 misdemeanor.

(b) Any notary who takes an acknowledgment or performs a verification or proof without personal knowledge of the signer's identity or without satisfactory evidence of the signer's identity is guilty of a Class 2 misdemeanor.

(c) Any notary who takes an acknowledgment or performs a verification or proof knowing it is false or fraudulent is guilty of a Class I felony.

(d) Any person who knowingly solicits or coerces a notary to commit official misconduct is guilty of a Class 1 misdemeanor.

(e) For purposes of enforcing this Chapter, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers when executing arrest warrants. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations of this Chapter. (1991, c. 683, s. 2; 1993, c. 539, ss. 6-8, 1121; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 226, s. 4.)

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PUBLIC NOTARIES IN MEXICO

A Public Notary in Mexico is someone who is mainly in charge of writing, authorizing, conserving, reproducing and giving faith to documents such as real estate contracts, wills, powers of attorney, documents concerning the creation/ending of companies and other similar acts, making them authentic and truthful.

Each state in Mexico has its own laws for notary laws. In general, to serve as a Public Notary, one must be over 25 and under 60, be an outstanding citizen and of good reputation, also he must be in full and excellent use of his abilities both physical and mental. Also, he or she must have a degree in Law and/or a Ph.D. Most Mexican universities offer Notary Law within their degrees.

Also, those Lawyers that wish to be Public Notaries have to present an examination and only those with the highest scores have the right to become Notaries. The law forbids a Public Notary to perform a public duty, to work for an industry, to be a minister or a merchant. This guarantees impartiality and trustworthiness in his duties.

By law, it is severely punishable to usurp or falsely claim to be a Public Notary without being one, to open a Notary Office without the corresponding authorization, or to give out signatures of contracts and powers of attorney without being a Notary.

There is a great difference between the role of the Mexican and the American Public Notaries. For example, in Mexico a power of attorney is presumed truthful once it has been done, as to the power of attorneys in the U.S. the signatures are only held truthful. Furthermore, in Mexico it is needed to be a Lawyer in order to serve as a Public Notary, while in the United States no college degree is required.

jalv

REPRESENTATIVE WAYNE GOODWIN
NORTH CAROLINA HOUSE OF REPRESENTATIVES
32nd DISTRICT

503 LEGISLATIVE OFFICE BUILDING
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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **Judiciary III**.

☒ Committee Substitute for
H.B. 955 A BILL TO BE ENTITLED AN ACT TO PREVENT THE MISREPRESENTATION OF THE AUTHORITY OF A NOTARY PUBLIC.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☒ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

2002

HOUSE
JUDICIARY III

MINUTES

House Committee on Judiciary III
2002 Session

Representative Wayne Goodwin, Chair
Jennifer Cotten, Committee Assistant

North Carolina General Assembly Date: 06/07/2002

Pending House Committee on Time: 10:32

Judiciary III Page: 001 of 001

2001-2002 Biennium Leg. Day: H-186/S-180

Bill	Short Title		Date	Latest Action
H 28=	UNLAWFUL TO IMPEDE A SCHOOL BUS.	H	02-20-2001	Re-ref Com On Judiciary III
H 325	LEVEL 2 GRADUATED DRIVERS LICENSE CHANGES.	H	02-28-2001	Ref To Com On Judiciary III
H 425=	TRAFFIC LAW ENFORCEMENT STATISTICS.	H	03-12-2001	Re-ref Com On Judiciary III
H 462	WORKERS' COMP/CERTAIN PUBLIC SCHOOL STUDENTS.	*H	04-17-2001	Re-ref Com On Judiciary III
H 548	ABOLISH ALIEN. AFFECT./CRIM.CONV.	H	03-12-2001	Ref To Com On Judiciary III
H 564	HEADLAMPS ON WHEN MV OPERATED.	H	03-12-2001	Ref To Com On Judiciary III
H 694=	CLARIFY MV DEALER FRANCHISE LAWS.	H	03-21-2001	Re-ref Com On Judiciary III
H 970	LITTER INFRACTION/CAR OWNER IS RESPONSIBLE.	H	04-04-2001	Ref To Com On Judiciary III
H 985	OUT-OF-STATE HANDGUN PERMITS VALID.	*H	04-26-2001	Re-ref Com On Judiciary III
H1196	INCREASE CERTAIN SHOPLIFTING PENALTIES.	H	04-12-2001	Ref To Com On Judiciary III
H1214	SEXUAL ASSAULT.	H	04-12-2001	Ref To Com On Judiciary III
H1248=	LOCAL REGULATION OF KEGS OF MALT BEVERAGE.	H	04-12-2001	Ref To Com On Judiciary III
H1249=	POSSESSING FRAUDULENT ID TO GET LIQUOR.	H	04-12-2001	Ref To Com On Judiciary III
H1278	CASINO NIGHTS FOR NONPROFITS.	H	04-12-2001	Ref To Com On Judiciary III
H1497=	NONCOMMERCIAL "SPAM" ILLEGAL.	H	06-03-2002	Ref To Com On Judiciary III
H1498=	CRIMINAL UNAUTHORIZED RECORDINGS.	H	06-03-2002	Ref To Com On Judiciary III
H1501=	FELONIOUS ACCESS TO GOVERNMENT COMPUTERS.	H	06-03-2002	Ref To Com On Judiciary III
H1583=	ELECTRONIC CRIMINAL PROCESS.	H	06-06-2002	Ref To Com On Judiciary III

H1646= ROWLAND ARREST JURISDICTION H 08-15-2002 Ref To Com On Judiciary III

'$' indicates the bill is an appropriations bill.
A bold line indicates the bill is an appropriations bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

MEMORANDUM

DATE: **7/24/02**

TO: **Representative Daughtry**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Daughtry**
Bill Sponsor

SUBJECT: **HB 28, UNLAWFUL TO IMPEDE A SCHOOL BUS** (Short Title)

I request that HB 28 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

July 25, 002 Date

MEMORANDUM

DATE: 7/24/02

TO: Representative Culp

FROM: Representative Goodwin

SUBJECT: Bills Pending in the Committee on Judiciary III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: Representative Goodwin

FROM: Representative Culp
Bill Sponsor

SUBJECT: HB 325, LEVEL 2 GRADUATED DRIVERS LICENSE CHANGES
(Short Title)

I request that HB 325 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

July 25, 2002 Date

MEMORANDUM

DATE: **7/24/02**

TO: **Representative Owens**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Owens**
Bill Sponsor

SUBJECT: **HB 462, WORKERS' COMP/CERTAIN PUBLIC SCHOOL STUDENTS** (Short Title)

I request that HB 462 not be considered by the Committee on Judiciary III.

M. C. Owens Jr
(Sponsor's Signature)

7-25-2002 Date

MEMORANDUM

DATE: **8/21/02**

TO: **Representative Capps**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Capps**
Bill Sponsor

SUBJECT: **HB 564, HEADLAMPS ON WHEN MV OPERATED** (Short Title)

I request that HB 564 not be considered by the Committee on Judiciary III.

not at this date

(Sponsor's Signature)

8/21/02 Date

MEMORANDUM

DATE: 7/25/02

TO: Representative Fox

FROM: Representative Goodwin

SUBJECT: Bills Pending in the Committee on Judiciary III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: Representative Goodwin

FROM: Representative Fox
Bill Sponsor

SUBJECT: HB 694, CLARIFY MV DEALER FRANCHISE LAWS (Short Title)

I request that HB 694 not be considered by the Committee on Judiciary III.

Stan Fox
(Sponsor's Signature)

7/30/02 Date

MEMORANDUM

DATE: 8/20/ 02

TO: Representative OWENS

FROM: Representative GOODWIN

SUBJECT: **Bills Pending in the Committee on JUDICIARY III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on JUDICIARY III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

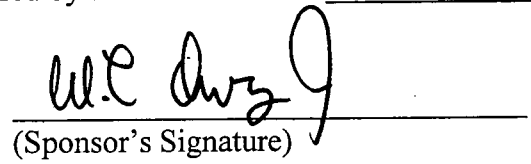
MEMORANDUM

TO: Representative GOODWIN

FROM: Representative OWENS
Bill Sponsor

SUBJECT: HB 694, CLARIFY MV DEALER FRANCHISE LAWS (Short Title)

I request that HB 694 not be considered by the Committee on JUDICIARY III.



(Sponsor's Signature)

August 21 2002 Date

MEMORANDUM

DATE: 7/25/02

TO: Representative Sherrill

FROM: Representative Goodwin

SUBJECT: Bills Pending in the Committee on Judiciary III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: Representative Goodwin

FROM: Representative Sherill
Bill Sponsor

SUBJECT: HB 694, CLARIFY MV DEALER FRANCHISE LAWS (Short Title)

I request that HB 694 not be considered by the Committee on Judiciary III.

Nilma Sherill
(Sponsor's Signature)

7/29/02 Date

MEMORANDUM

DATE: 7/25/02

TO: **Representative Sutton**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Sutton**
Bill Sponsor

SUBJECT: **HB 694, CLARIFY MV DEALER FRANCHISE LAWS** (Short Title)

I request that HB 694 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

7-25-02 Date

MEMORANDUM

DATE: **8/21/02**

TO: **Representative Capps**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Capps**
Bill Sponsor

SUBJECT: **HB 970, LITTER INFRACTION/CAR OWNER IS RESPONSIBLE**
(Short Title)

I request that HB 970 not be considered by the Committee on Judiciary III.

Not at this late date

(Sponsor's Signature)

Aug 21, 2002 Date

MEMORANDUM

DATE: 8/21/02

TO: Representative McLawhorn

FROM: Representative Goodwin

SUBJECT: Bills Pending in the Committee on Judiciary III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

If you would like to request that your bill not be considered by the Committee on Judiciary III, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 503. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: Representative Goodwin

FROM: Representative McLawhorn
Bill Sponsor

SUBJECT: HB 1196, INCREASE CERTAIN SHOPLIFTING PENALTIES
(Short Title)

I request that HB 1196 not be considered by the Committee on Judiciary III.

Marian McLawhorn
(Sponsor's Signature)

8/20/02
Date

MEMORANDUM

DATE: **7/25/02**

TO: **Representative Cox**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Cox**
Bill Sponsor

SUBJECT: **HB 1214, SEXUAL ASSAULT** (Short Title)

I request that HB 1214 not be considered by the Committee on Judiciary III.

_____
(Sponsor's Signature)

_____August 26, 2002_____Date

MEMORANDUM

DATE: **7/25/02**

TO: **Representative Alexander**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Alexander**
Bill Sponsor

SUBJECT: **HB 1248, LOCAL REGULATION OF KEGS OF MALT BEVERAGE** (Short Title)

I request that HB 1248 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

August 29, 2002 Date

MEMORANDUM

DATE: **7/25/02**

TO: **Representative Goodwin**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Goodwin**
Bill Sponsor

SUBJECT: **HB 1248, LOCAL REGULATION OF KEGS OF MALT BEVERAGE** (Short Title)

I request that HB 1248 not be considered by the Committee on Judiciary III.

Wayne Goodwin
(Sponsor's Signature)

7/25/02
Date

MEMORANDUM

DATE: **7/25/02**

TO: **Representative Alexander**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Alexander**
Bill Sponsor

SUBJECT: **HB 1249, POSSESSING FRAUDULENT ID TO GET LIQUOR**
(Short Title)

I request that HB 1249 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

August 29, 2002 Date

MEMORANDUM

DATE: 7/25/02

TO: Representative Goodwin

FROM: Representative Goodwin

SUBJECT: Bills Pending in the Committee on Judiciary III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: Representative Goodwin

FROM: Representative Goodwin
Bill Sponsor

SUBJECT: HB 1249, POSSESSING FRAUDULENT ID TO GET LIQUOR
(Short Title)

I request that HB 1249 not be considered by the Committee on Judiciary III.

Wayne Goodwin
(Sponsor's Signature)

7/25/02
Date

MEMORANDUM

DATE: 8/20/ 02

TO: Representative OWENS

FROM: Representative GOODWIN

SUBJECT: Bills Pending in the Committee on JUDICIARY III

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: Representative GOODWIN

FROM: Representative OWENS
Bill Sponsor

SUBJECT: HB 1278, CASINO NIGHTS FOR NONPROFITS (Short Title)

I request that HB 1278 not be considered by the Committee on JUDICIARY III.

(Sponsor's Signature)

AUGUST 21, 2002 Date

MEMORANDUM

DATE: 7/25/02

TO: Representative Tolson

FROM: Representative Goodwin

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: Representative Goodwin

FROM: Representative Tolson
Bill Sponsor

SUBJECT: HB 1497, NONCOMMERCIAL "SPAM" ILLEGAL (Short Title)

I request that HB 1497 not be considered by the Committee on Judiciary III.

(Sponsor's Signature)

7/29/02 Date

MEMORANDUM

DATE: 7/25/02

TO: Representative Tolson

FROM: Representative Goodwin

SUBJECT: **Bills Pending in the Committee on Judiciary III**

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

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MEMORANDUM

TO: Representative Goodwin

FROM: Representative Tolson
Bill Sponsor

SUBJECT: **HB 1498, CRIMINAL UNAUTHORIZED RECORDINGS** (Short Title)

I request that HB 1498 not be considered by the Committee on Judiciary III.

Joe P. Tolson
(Sponsor's Signature)

7/29/02 Date

MEMORANDUM

DATE: 10/2/02

TO: **Representative Bonner**

FROM: **Representative Goodwin**

SUBJECT: **Bills Pending in the Committee on Judiciary III**

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MEMORANDUM

TO: **Representative Goodwin**

FROM: **Representative Bonner**
Bill Sponsor

SUBJECT: **HB 1646, ROWLAND ARREST JURISDICTION** (Short Title)

I request that HB 1646 not be considered by the Committee on Judiciary III.

Donald G. Bonner
(Sponsor's Signature)

10/2/02 Date

HOUSE COMMITTEE ON JUDICIARY III
2002 Short Session

MEMBER	ASSISTANT	PHONE	OFFICE
GOODWIN, Wayne (Chair)	Jenny Cotten	733-5849	503
BAREFOOT, Daniel (Vice-Chair)	Jackie Pittman	733-5661	416B
MICHAUX, Mickey (Vice-Chair)	Anita Wilder	733-5772	1325
BELL, Larry	Carolyn Edwards	733-5863	531
BONNER, Donald	Phyllis Cameron	733-5803	1313
CAPPS, Russell	Nancy Fox	715-2526	1424
COLE, Nelson	Suzanne Smith	733-5779	1218
CRAWFORD, Jim	Linda Winstead	733-5824	1301
CRAWFORD, Mark	Denise Roberts	733-5605	1209
DAUGHTRY, Leo	Bernice Bullard	733-5868	510
ELLIS, Sam	Alice Falcone	733-5755	607
ESPOSITO, Theresa	Judy Lowe	715-3009	418C
FOX, Stanley	Mary Capps	733-5758	2123
HENSLEY, Bob	Margie Penven	733-5780	610
HOLMES, George	Glenda Jacobs	733-5771	2119
JARRELL, Mary	Edna Lee Collar	733-5749	2219
KISER, Joe	Marilyn Holder	733-5782	1317
RUSSELL, Carolyn	Susan Brothers	715-0873	1213
WEATHERLY, John	Nancy Garriss	733-4838	502

EX OFFICIO MEMBERS

BADDOUR, Phil	Tracy Dixon	715-0850	2301
CUNNINGHAM, Pete	Valerie Rustin	733-5778	541
DEDMON, Andy	Lisa Brown	733-5732	2213
EARLE, Beverly	Ann Raeford	733-5747	535
HACKNEY, Joe	Emily Reynolds	733-5752	2207

RESEARCH DIVISION
733-2578

Brenda Carter, Committee Counsel
Karen Cochrane-Brown, Committee Counsel
Dianna Jessup, Committee Counsel

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY III COMMITTEE
2001 – 2002 SESSION

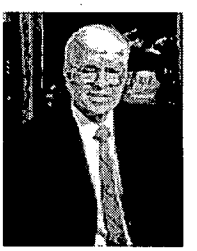
Rep. Goodwin
(Chair)

Rep. Barefoot
(Vice-Chair)

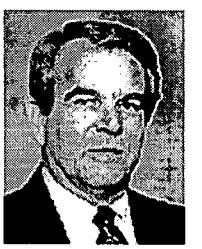
Rep. Michaux
(Vice-Chair)

Rep. Bell

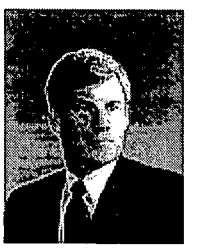
Rep. Bonner



Rep. Capps



Rep. Cole



Rep. J. Crawford

Rep. M. Crawford

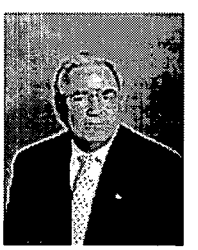
Rep. Daughtry

Rep. Ellis

Rep. Esposito

Rep. Fox

Rep. Hensley

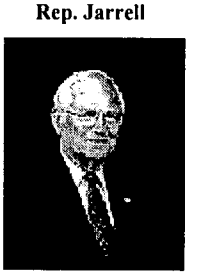


Rep. Holmes

Rep. Jarrell

Rep. Kiser

Rep. Russell



Rep. Weatherly

ATTENDANCE

HOUSE COMMITTEE ON JUDICIARY III

2002 SHORT SESSION

	06-18-02	07-02-02	07-09-02	08-27-02	09-05-02									
GOODWIN, Wayne (CHAIR)	•	•	•	•	•									
BAREFOOT, Daniel (VICE-CHAIR)	•	•	•	•	A									
MICHAUX, Mickey (VICE-CHAIR)	•	A	•	A	A									
BELL, Larry	•	•	•	•	•									
BONNER, Donald	•	A	•	•	•									
CAPPS, Russell	•	•	•	•	•									
COLE, Nelson	•	A	A	•	•									
CRAWFORD, Jim	A	A	•	•	•									
CRAWFORD, Mark	•	•	•	•	•									
DAUGHTRY, Leo	•	•	•	E	•									
ELLIS, Sam	•	A	•	•	•									
ESPOSITO, Theresa	•	A	•	•	•									
FOX, Stanley	•	•	•	•	•									
HENSLEY, Bob	•	•	•	•	A									
HOLMES, George	A	•	A	A	A									
JARRELL Mary	•	•	•	A	•									
KISER, Joe	•	•	•	•	•									
RUSSELL Carolyn	•	A	A	•	A									
WEATHERLY, John	A	•	A	A	•									
---EX-OFFICIO MEMBERS---														
BADDOUR, Phil	–	–	–	–	–									
CUNNINGHAM, Pete	–	–	–	–	–									
DEDMON, Andy	–	–	–	–	–									
EARLE, Beverly	–	–	–	–	–									
HACKNEY, Joe	–	–	–	–	–									

Member Present • *Excused Absence* E *Member Absent* A *Ex-Officio not present* –

MINUTES
HOUSE COMMITTEE ON JUDICIARY III

June 18, 2002

The House Committee on Judiciary III met on Tuesday, June 18, 2002, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chairs Daniel Barefoot and Mickey Michaux, Representatives Bell, Bonner, Capps, Cole, Mark Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Jarrell, Kiser, and Russell. Brenda Carter and Dianna Jessup, Staff Counselors were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

Representative Michaux was recognized to explain House Bill 1583, A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION. Tom Andrews, General Council at Administrative Office of the Courts was recognized to explain the bill and answer questions. Representative Ellis moved for a favorable report. Representative Michaux moved for the adoption of three amendments. The motion passes and the amendments are adopted. Representative Michaux moves for a favorable report as to committee substitute bill H-1583-PCS6448-RV-29, unfavorable as to original bill (House Bill 1583). The motion carried.

There being no further business, the Chair adjourned the meeting at 12:40pm.

Respectfully Submitted,

Representative Wayne Goodwin
Chairman, House Judiciary III

Jennifer Cotten
Committee Assistant

Attachments

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2001-2002 SESSION

You are hereby notified that the Committee on **Judiciary III** will meet as follows:

DAY & DATE: **Tuesday, June 18, 2002**

TIME: **12:00 Noon**

LOCATION: **Room 421**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
H1583 Electronic Criminal Process - Rep. Michaux

Respectfully,

Representative Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **11:30am** on **June 13, 2002.**

___Principal Clerk
___Reading Clerk - House Chamber

Jenny Cotten (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

June 18, 2002
Room 421 LOB
12 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1583 ELECTRONIC CRIMINAL PROCESS
Representative Mickey Michaux
Representative Paul Miller

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — 6/18/02

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brett Stohs	NC PIRG
Cameron Raber	NC State Wildlife
Tom Underwood	ADC
Shayna Walter	intern - NCAWA
Richard Gusler	Recording Industry Asso. of America
Patrick Arnold	House Intern
John Phelps	NCLM
Elizabeth Dalton	Bode & Associates
Omid Walsh	Hunton & Williams
Patricia Young	Friend of Residents in Long Term Care
Bill Scoggins	Kennedy Covington

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1583*

Short Title:	Electronic Criminal Process.	(Public)
Sponsors:	Representatives Michaux; and Miller.	
Referred to:	Judiciary III.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

(1) "Copy" means all identical versions of a document created or existing in paper form, including the original and all other identical versions of the document in paper form.

(2) "Document" means any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment or other writing intended in a criminal or contempt proceeding to authorize or require an action, to record a decision or to communicate or record information. The term does not include search warrants. A document may be created and exist in paper form or in electronic form or in both forms.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, Internet or similar capabilities.

(4) "Electronic Repository" means an automated electronic repository for criminal process created and maintained pursuant to G.S. 15A-301.1.

(5) "Electronic signature" means any electronic method of signing a document that meets each of the following requirements:

a. Identifies and authenticates a particular person as the signer of the document, is unique to the person using it, is capable of certification, and is under the sole control of the person using it.
b. Is attached to or logically associated with the document in such a manner that if the document is altered in any way without authorization of the signer, the signature is invalidated.
c. Indicates that person's intent to issue, enter or otherwise authenticate the document.

(6) "Entered" means signed and filed in the office of the clerk of superior court of the county in which the document is to be entered. A document may be entered in either paper form or electronic form.

(7) "Filing" or "filed" means:
a. When the document is in paper form, delivering the original document to the office where the document is to be filed. Filing is complete when the original document is received in the office where the document is to be filed.
b. When the document is in electronic form, creating and saving the document, or transmitting it, in such a way that it is unalterably retained in the electronic records of the office where the document is to be filed. A document is "unalterably retained" in an electronic record when it may not be edited or otherwise altered except by a person with authorization to do so. Filing is complete when the document has first been unalterably retained in the electronic records of the office where the document is to be filed.

(8) "Issued" applies to documents in either paper form or electronic form. A document that is first created in paper form is issued when it is signed. A document that is first created in electronic form is issued when it is signed, filed in the office of the clerk of superior court of the county for which it is to be issued, and retained in the Electronic Repository.

(9) "Original" means:
a. A document first created and existing only in paper form, bearing the original signature of the person who signed it. The term also includes each copy in paper form that is printed through the facsimile transmission of the copy bearing the original signature of the person who signed it.
b. A document existing in electronic form, including the electronic form of the document and any copy that is printed from the electronic form.

(10) "Signature" means any symbol, including but not limited to the name of an individual, which is executed by that individual, personally or through an authorized agent, with the intent to authenticate or to effect the issuance or entry of a document. The term includes an electronic

signature. Each signature shall include the full first and last name, and any middle initial, of the individual. A document may be signed by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document. Any party challenging the validity of a signature shall have the burden of pleading, producing evidence and proving the following:

a. The signature was not the act of the person whose signature it appears to be.

b. If the signature is an electronic signature, the requirements of subdivision (5) of this section have not been met."

SECTION 2. Article 17 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-301.1. Electronic Repository.**

(a) The Administrative Office of the Courts shall create and maintain, in cooperation with State and local law enforcement agencies, an automated electronic repository for criminal process (hereinafter referred to as the Electronic Repository), which shall comprise a secure system of electronic data entry, storage and retrieval that provides for creating, signing, issuing, entering, filing and retaining criminal process in electronic form, and that provides for the following with regard to criminal process in electronic form:

(1) Tracking criminal process.

(2) Accessing criminal process through remote electronic means by all authorized judicial officials and employees and all authorized law enforcement officers and agencies that have compatible electronic access capacity.

(3) Printing any criminal process in paper form by any authorized judicial official or employee or any authorized law enforcement officer or agency.

The Administrative Office of the Courts shall assure that all electronic signatures effected through use of the system meet the requirements of G.S. 15A-101.1(5).

(b) Any criminal process may be created, signed and issued in electronic form, filed electronically in the office of a clerk of superior court, and retained in electronic form in the Electronic Repository.

(c) Any process that was first created, signed and issued in paper form may subsequently be filed in electronic form and entered in the Electronic Repository by the judicial official who issued the process or by any person authorized to enter it on behalf of the judicial official. All copies of the process in paper form are then subject to the provisions of subsections (i) and (k) of this section.

(d) Any criminal process in the Electronic Repository shall be part of the official records of the clerk of superior court of the county for which it was issued, and shall be maintained in the office of that clerk as required by G.S. 15A-301(a).

(e) Any criminal process in the Electronic Repository may, at any time and at any place in this State, be printed in paper form and delivered to a law enforcement

agency or officer by any judicial official, law enforcement officer or other authorized person.

(f) When printed in paper form pursuant to subsection (e) of this section, any copy of a criminal process in the Electronic Repository confers the same authority and has the same force and effect for all other purposes as the original of a criminal process that was created and exists only in paper form.

(g) Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a copy of the process that was printed in paper form pursuant to subsection (e) of this section.

(h) The tracking information specified in subsection (i) of this section shall promptly be entered in the Electronic Repository when one or both of the following occurs:

(1) A process is first created, signed and issued in paper form and subsequently entered in electronic form in the Electronic Repository as provided in subsection (c) of this section.

(2) A copy of a process in the Electronic Repository is printed in paper form pursuant to subsection (e) of this section.

(i) The following tracking information shall be entered in the Electronic Repository in accordance with subsections (c) and (h) of this section:

(1) The date and time when the process was printed in paper form.

(2) The name of the law enforcement agency by or for which the process was printed in paper form.

(3) If available, the name and identification number of the law enforcement officer to whom any copy of the process was delivered.

(j) The service requirements set forth in subsection (k) of this section shall apply to:

(1) Each copy of a criminal process that is first created in paper form and subsequently entered into the Electronic Repository as provided in subsection (c) of this section.

(2) Each copy of a criminal process in the Electronic Repository that is printed in paper form pursuant to subsection (e) of this section.

(k) Service Requirements for Process Entered in the Electronic Repository. – The copy of the process shall be served not later than 24 hours after it has been printed. The date, time and place of service shall promptly be recorded in the Electronic Repository and shall be part of the official records of the court. If the process is not served within 24 hours, that fact shall promptly be recorded in the Electronic Repository and all copies of the process in paper form shall be destroyed. The process may again be printed in paper form at later times and at the same or other places. Subsection (f) of this section applies to each successively printed copy of the process.

(l) A law enforcement officer or agency that does not have compatible remote access to the Electronic Repository shall promptly communicate, by any reasonable means, the information required by subsection (k) of this section to the clerk of superior court of the county in which the process was issued or to any other person authorized to

enter information into the Electronic Repository, and the information shall promptly be entered in the Electronic Repository.

(m) Failure to enter any information as required by subsection (i) or (k) of this section does not invalidate the process, nor does it invalidate service or execution made after the period specified in subsection (k) of this section.

(n) A warrant created and existing only in paper form is returned within the meaning of G.S. 132-1.4(k) when it is returned as provided in G.S. 15A-301(d). A warrant that exists only in electronic form in the Electronic Repository is returned within the meaning of G.S. 132-1.4(k), when the information specified in subsection (k) of this section is first entered in the Electronic Repository."

SECTION 3. G.S. 15A-301 reads as rewritten:

"**§ 15A-301. Criminal process generally.**

(a) Formal Requirements. –

(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the ~~clerk.~~ clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.

(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it. Each signature shall include the full name of the signer, spelled out in legible characters.

(b) To Whom Directed. – Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(c) Service. –

(1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving ~~criminal process~~ for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(d) Return. –

(1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.

(2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.

a. Warrant for arrest – 180 days.

b. Order for arrest – 180 days.

c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.

(3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).

(4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

(e) Copies to Be Made by Clerk. –

(1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).

(2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.

(3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.

(4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

(f) Protection of Process Server. – An officer or other employee designated as provided in subsection (b), and serving process as provided in subsection (b), receiving under this section or under G.S. 15A-301.1 criminal process which is complete and regular on its face may serve the process in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

(1) A warrant or criminal summons shall be recalled by the issuing judicial official when that official determines that probable cause did not exist for its issuance.

(2) Any criminal process other than a warrant or criminal summons may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:

a. A copy of the process has been served on the defendant.

b. All charges on which the process is based have been disposed.

c. The person named as the defendant in the process is not the person who committed the charged offense.

d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.

(3) The dismissal of all charges on which a process is based shall effect the recall, without further action by the court, of that process and of all other outstanding process issued in connection with the charges, including all orders for arrest issued for the defendant's failure to appear to answer the charges.

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each agency that is known to be in possession of a copy of the process in paper form and that does not have remote electronic access to the Electronic Repository."

SECTION 4. This act becomes effective January 1, 2003, and applies to all acts done on and after that date.

June 6, 2002

H 1583. ELECTRONIC CRIMINAL PROCESS (=S 1257). *TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.* Identical to S 1257, introduced 06/06/02.

Intro. by Michaux.

Ref. to Judiciary III	GS 15A

HOUSE BILL 1583: ELECTRONIC CRIMINAL PROCESS

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Michaux
Date:	June 18, 2002	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1583 would establish the legal effect of the use of electronic technology in criminal process and procedure, as recommended by the North Carolina Courts Commission.***

BILL ANALYSIS: House Bill 1583 amends the Criminal Procedure Act by setting up procedures for issuing criminal process by electronic means using electronic signatures, and for saving or filing process electronically.

Section 1 of the bill sets out definitions that are applicable to provisions relating to the use of electronic technology in criminal process and procedure. The definitions are applicable to Chapter 7A of the Statutes (Judicial Department), Chapter 15A (Criminal Procedure Act), and any other provisions of the General Statutes that deal with criminal process or procedure.

Section 2 of the bill directs the Administrative Office of the Courts (AOC) to create and maintain, in cooperation with state and local law enforcement agencies, an automated electronic repository for criminal process -- a secure system that will provide for the creation, filing and retention of criminal process in electronic form. The system will also provide for tracking and for accessing criminal process through remote electronic means by all authorized judicial officials and employees and law enforcement officers and agencies that have compatible electronic access capacity. The system will provide for printing criminal process in paper form by authorized officials. Any process in the Electronic Repository is part of the official records of the clerk of superior court of the county for which it was issued.

The bill specifies procedures to be followed in serving and returning process that has been electronically stored. Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a printed copy of the process. The copy of the process must be served not later than 24 hours after it has been printed. If not served within that time, that fact must be recorded in the Electronic Repository and all printed copies destroyed. The process may again be printed in paper form at later times and at the same or other places. The bill provides that law enforcement agencies that do not have compatible remote access to the Electronic Repository may make reports of service or failure of service to the clerk of superior court, who will then enter the required information into the Repository.

Section 3 of the bill makes various conforming amendments to G.S. 15A-301 regarding criminal process generally, and adds a new subsection (g) describing the procedure for recalling process that has not been served.

The bill would become effective January 1, 2003 and apply to all acts done on or after that date.

ELECTRONIC CRIMINAL PROCESS AND PROCEDURE

THE TEAMS

User Advisory Committee For Technology Development (NCAWARE Project)
Co-chairs:

Hon. Lynn Johnson, Senior Resident Superior Court Judge, Fayetteville
Hon. Frank McGuirt, Sheriff, Union County

Members:

Mr. Tom Andrews, AOC General Counsel
Hon. Jeffrey Barger, Clerk of Superior Court, Rowan County
Mr. Gary Balance, Greensboro Police Department
Mr. Worth Brock, N.C. Dept of Justice-IT Division
Hon. Anita Chappell, Magistrate, Watauga County
Ms. Cheryl George, N.C. Dept. of Justice-IT Division
Hon. Sandra Herring, Magistrate, Alamance County
Hon. Worth Hill, Sheriff, Durham County
Hon. Karen Johnson, Magistrate, Mecklenburg County
Capt. Chuck Johnson, Charlotte-Mecklenburg Police Dept.
Mr. Bart Menser, Asst. District Attorney, Mecklenburg County
Hon. Valerie Mitchell Pitman, District Attorney, 6B Pros. Dist
Ms. Carol Morris, Deputy CSC, Durham County
Hon. Mary Jane Rash, Magistrate, Iredell County
Hon. Bill Stewart, District Court Judge, Wilson County
Lt. Ken Wiseman, Fayetteville Police Dept.
Hon. Todd Wyrick, Magistrate, Rowan County
Hon. Dennis Redwing, Chief District Court Judge, Gaston County
Hon. Eric Van Vleet, Magistrate, Durham County
Ms. Kathy Glass, Systems and Applications Development Manager, Buncombe County

Drafting Subcommittee For This Legislation:

Tom Andrews, General Counsel, AOC, Chair
Jim Drennan, Institute of Government
Bob Farb, Institute of Government
Ike Avery, Special Deputy Attorney General (Crime Control and Public Safety)
John Aldridge, Special Deputy Attorney General (SBI/DCI and Local Law Enforcement)
Hal Askins, Special Deputy Attorney General (Division of Motor Vehicles)
Joe Zeszotaraski, Poyner and Spruill, Raleigh (Criminal Defense Attorney)
Bob Clark, Assistant Public Defender, Greensboro
Basil McVey, Court Services Administrator, AOC
Nancy Kiesenhofer, Court Services Division, AOC
Various project managers and other technical specialists

THE TECHNOLOGY

Main Features

- There will be a statewide electronic repository for warrants and other criminal process.
- All judicial officials and law enforcement agencies will have on-line access to the information in this repository.
- After a magistrate finds probable cause, the magistrate will compose, sign, issue and file the warrant electronically.
- The warrant itself will then exist in the clerk's records in electronic form only, until a copy is needed to serve on the defendant.
- When needed, the warrant may then be printed in paper form anywhere in the State and served on the defendant; the officer will then make his/her return electronically.
- In offices without direct access to the electronic repository, the warrant can be still issued in paper form, and then entered in the electronic repository by the clerk.

Advantages

- All outstanding, unserved warrants are immediately available to all law enforcement agencies and officers throughout the State, and can immediately be served whenever and wherever defendant is taken into custody.
- Reduces paperwork:
    - No paper exists until needed.
    - Only defendant's copy is ever printed.
    - A paper "original" need not be physically sent across the State to effect service and record the officer's return.
- Reduces jail time spent awaiting arrival of a paper warrant for service on defendant.
- Allows for immediate update when warrant served, when charges disposed.
- Reduces risk of improper arrest resulting from failure to recall and retrieve a paper warrant after the warrant is served, or to recall an order for arrest after the charges are disposed.

THIS LEGISLATION

Generally

- Provides that electronic means of creating, signing, issuing, filing and transmitting criminal process have the same legal effect as traditional paper means.
- No change in legal requirements for valid issuance or service of process, or for valid arrest.

Section 1

- Provides new definitions of commonly used terms, so as to include electronic means.
- These definitions apply throughout Code of Criminal Procedure, and all related chapters of the General Statutes.
- Terms defined are:
    - Copy (all identical versions in paper form),
    - Document (includes both paper and electronic form, requires document to include legible name of signer),

- Electronic (same as in other State and Federal electronic signature statutes)
- Electronic repository (as authorized in Section 2 of this legislation),
- Electronic signature (synthesizes requirements of several definitions in State and Federal statutes)
- Enter, as in to "enter" a judgment (includes both paper and electronic means),
- Filing and filed (includes both paper and electronic means; for electronic filing requires security against alteration),
- Issued (includes paper and electronic means),
- Original (includes, for paper process the traditional original, and for electronic process both the electronic form and any copy printed in paper form),
- Signature, signed (includes manual, mechanical and electronic means, burden of disproving signature is on party challenging it).

Section 2

- Adds a new section (G.S. 15A-301.1) to Article 17 of the Code of Criminal Procedure (Criminal Process).
- Main features:
  - Authorizes and directs AOC to create an electronic repository for criminal process; requires AOC to assure that electronic signatures comply with definition. G.S. 15A-301.1(a).
  - Allows process to be created, signed and issued in electronic form, filed electronically and retained in electronic form. G.S. 15A-301.1(b).
  - Allows for filing in the electronic repository after a process is first issue in paper form. G.S. 15A-301.1(c).
  - Allows any process in the electronic repository to be printed anywhere in the State, delivered to law enforcement officer and served on defendant. G.S. 15A-301.1(e) through (g).
  - Sets requirements for tracking paper copies and for entering information about service. G.S. 15A-301.1(h) through (k).
  - Clarifies when an electronic warrant becomes a public record. G.S. 15A-301.1(n).
  - Plus miscellaneous provisions. G.S. 15A-301.1(d), (l), (m).

Section 3

- Makes conforming changes to G.S. 15A-301 (the existing statute dealing with criminal process).
- Preserves all existing paper procedures for paper process; recognizes electronic procedures for electronic process.
- Specifies procedure for recalling process; provides dismissal of all charges effects recall of all outstanding process without further action by court. G.S. 15A-301(g).

Section 4

- Effective date – 1/1/03. (The act will provide needed clarification even before the electronic repository is fully operational. For example, electronic signatures will be validated; faxed warrants will be effective for service.)

HOUSE BILL 1583
ELECTRONIC CRIMINAL PROCESS

AMENDMENT #1
REQUIRE DOCUMENT TO CONTAIN LEGIBLE NAME OF SIGNER, BUT ALLOW SIGNER TO DECIDE WHAT NAME TO USE
Responds to concerns by many officials, especially female magistrates, that requiring full legal name may expose them to danger. Under this amendment a magistrate may use the name A.E.Chappell, and that is what will be printed on the document, but not the full first NAME and middle initial.

Page 1, Line 21

At the end of the line, add the following new sentence:
"Each document shall contain the legible, printed name of the person who signed the document."

Page 3, Lines 1 and 2
Delete the sentence beginning, "Each signature shall indicate . . .."

AMENDMENT #2
PROTECT CONFIDENTIALITY OF UNSERVED WARRANTS
This corrects an error in the original draft, that would have made all warrants part of the public record 24 hours after first printing, even when the defendant was still being actively pursued by law enforcement.

Page 4, Line 39

At the end of the line, add the following sentence:
"When service of the warrant is no longer being actively pursued, that fact shall be promptly recorded in the Electronic Repository."

Page 5, Lines 7 through 10

Rewrite the sentence beginning "A warrant that exists only . . ." to read:
"A warrant that exists only in electronic form in the Electronic Repository is returned within the meaning of G.S. 132-1.4(4) when it has been served or when service of the warrant is no longer being actively pursued, as either fact is entered in the Electronic Repository pursuant to subsection (k)."

AMENDMENT #3
AUTOMATIC RECALL OF PROCESS AFTER DISPOSITION OF CHARGES
This expands an unnecessarily narrow provision of the original draft, which would have provided for automatic recall of criminal process only after all charges in it have been dismissed. Automatic recall should occur after any disposition, not just dismissal.

Page 7, Line 23

Delete the word "dismissal" and replace with the word "disposition."

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative **Goodwin** (Chair) for the Committee on **JUDICIARY III.**

☐ Committee Substitute for
H.B. 1583 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill, ☐ ~~which changes the title~~, unfavorable as to the original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1583
PROPOSED COMMITTEE SUBSTITUTE H1583-PCS6448-RV-29

Short Title: Electronic Criminal Process. (Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGAL EFFECT OF THE USE OF ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

(1) "Copy" means all identical versions of a document created or existing in paper form, including the original and all other identical versions of the document in paper form.

(2) "Document" means any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment, or other writing intended in a criminal or contempt proceeding to authorize or require an action, to record a decision or to communicate or record information. The term does not include search warrants. A document may be created and exist in paper form or in electronic form or in both forms. Each document shall contain the legible, printed name of the person who signed the document.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, Internet, or similar capabilities.

(4) "Electronic Repository" means an automated electronic repository for criminal process created and maintained pursuant to G.S. 15A-301.1.

(5) "Electronic signature" means any electronic method of signing a document that meets each of the following requirements:
a. Identifies and authenticates a particular person as the signer of the document, is unique to the person using it, is capable of certification, and is under the sole control of the person using it.
b. Is attached to or logically associated with the document in such a manner that if the document is altered in any way without authorization of the signer, the signature is invalidated.
c. Indicates that person's intent to issue, enter or otherwise authenticate the document.

(6) "Entered" means signed and filed in the office of the clerk of superior court of the county in which the document is to be entered. A document may be entered in either paper form or electronic form.

(7) "Filing" or "filed" means:
a. When the document is in paper form, delivering the original document to the office where the document is to be filed. Filing is complete when the original document is received in the office where the document is to be filed.
b. When the document is in electronic form, creating and saving the document, or transmitting it, in such a way that it is unalterably retained in the electronic records of the office where the document is to be filed. A document is "unalterably retained" in an electronic record when it may not be edited or otherwise altered except by a person with authorization to do so. Filing is complete when the document has first been unalterably retained in the electronic records of the office where the document is to be filed.

(8) "Issued" applies to documents in either paper form or electronic form. A document that is first created in paper form is issued when it is signed. A document that is first created in electronic form is issued when it is signed, filed in the office of the clerk of superior court of the county for which it is to be issued, and retained in the Electronic Repository.

(9) "Original" means:
a. A document first created and existing only in paper form, bearing the original signature of the person who signed it. The term also includes each copy in paper form that is printed through the facsimile transmission of the copy bearing the original signature of the person who signed it.
b. A document existing in electronic form, including the electronic form of the document and any copy that is printed from the electronic form.

(10) "Signature" means any symbol, including, but not limited to, the name of an individual, which is executed by that individual, personally or

through an authorized agent, with the intent to authenticate or to effect the issuance or entry of a document. The term includes an electronic signature. A document may be signed by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document. Any party challenging the validity of a signature shall have the burden of pleading, producing evidence, and proving the following:

a. The signature was not the act of the person whose signature it appears to be.

b. If the signature is an electronic signature, the requirements of subdivision (5) of this section have not been met."

SECTION 2. Article 17 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-301.1. Electronic Repository.**

(a) The Administrative Office of the Courts shall create and maintain, in cooperation with State and local law enforcement agencies, an automated electronic repository for criminal process (hereinafter referred to as the Electronic Repository), which shall comprise a secure system of electronic data entry, storage, and retrieval that provides for creating, signing, issuing, entering, filing, and retaining criminal process in electronic form, and that provides for the following with regard to criminal process in electronic form:

(1) Tracking criminal process.

(2) Accessing criminal process through remote electronic means by all authorized judicial officials and employees and all authorized law enforcement officers and agencies that have compatible electronic access capacity.

(3) Printing any criminal process in paper form by any authorized judicial official or employee or any authorized law enforcement officer or agency.

The Administrative Office of the Courts shall assure that all electronic signatures effected through use of the system meet the requirements of G.S. 15A-101.1(5).

(b) Any criminal process may be created, signed, and issued in electronic form, filed electronically in the office of a clerk of superior court, and retained in electronic form in the Electronic Repository.

(c) Any process that was first created, signed, and issued in paper form may subsequently be filed in electronic form and entered in the Electronic Repository by the judicial official who issued the process or by any person authorized to enter it on behalf of the judicial official. All copies of the process in paper form are then subject to the provisions of subsections (i) and (k) of this section.

(d) Any criminal process in the Electronic Repository shall be part of the official records of the clerk of superior court of the county for which it was issued and shall be maintained in the office of that clerk as required by G.S. 15A-301(a).

(e) Any criminal process in the Electronic Repository may, at any time and at any place in this State, be printed in paper form and delivered to a law enforcement

agency or officer by any judicial official, law enforcement officer, or other authorized person.

(f) When printed in paper form pursuant to subsection (e) of this section, any copy of a criminal process in the Electronic Repository confers the same authority and has the same force and effect for all other purposes as the original of a criminal process that was created and exists only in paper form.

(g) Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a copy of the process that was printed in paper form pursuant to subsection (e) of this section.

(h) The tracking information specified in subsection (i) of this section shall promptly be entered in the Electronic Repository when one or both of the following occurs:

(1) A process is first created, signed, and issued in paper form and subsequently entered in electronic form in the Electronic Repository as provided in subsection (c) of this section.

(2) A copy of a process in the Electronic Repository is printed in paper form pursuant to subsection (e) of this section.

(i) The following tracking information shall be entered in the Electronic Repository in accordance with subsections (c) and (h) of this section:

(1) The date and time when the process was printed in paper form.

(2) The name of the law enforcement agency by or for which the process was printed in paper form.

(3) If available, the name and identification number of the law enforcement officer to whom any copy of the process was delivered.

(j) The service requirements set forth in subsection (k) of this section shall apply to:

(1) Each copy of a criminal process that is first created in paper form and subsequently entered into the Electronic Repository as provided in subsection (c) of this section.

(2) Each copy of a criminal process in the Electronic Repository that is printed in paper form pursuant to subsection (e) of this section.

(k) Service Requirements for Process Entered in the Electronic Repository. – The copy of the process shall be served not later than 24 hours after it has been printed. The date, time, and place of service shall promptly be recorded in the Electronic Repository and shall be part of the official records of the court. If the process is not served within 24 hours, that fact shall promptly be recorded in the Electronic Repository and all copies of the process in paper form shall be destroyed. The process may again be printed in paper form at later times and at the same or other places. Subsection (f) of this section applies to each successively printed copy of the process. When service of the warrant is no longer being actively pursued, that fact shall be promptly recorded in the Electronic Repository.

(l) A law enforcement officer or agency that does not have compatible remote access to the Electronic Repository shall promptly communicate, by any reasonable means, the information required by subsection (k) of this section to the clerk of superior

court of the county in which the process was issued or to any other person authorized to enter information into the Electronic Repository, and the information shall promptly be entered in the Electronic Repository.

(m) Failure to enter any information as required by subsection (i) or (k) of this section does not invalidate the process, nor does it invalidate service or execution made after the period specified in subsection (k) of this section.

(n) A warrant created and existing only in paper form is returned within the meaning of G.S. 132-1.4(k) when it is returned as provided in G.S. 15A-301(d). A warrant that exists only in electronic form in the Electronic Repository is returned within the meaning of G.S. 132-1.4(k), when it has been served or when service of the warrant is no longer being actively pursued, as either fact is entered in the Electronic Repository pursuant to subsection (k) of this section."

SECTION 3. G.S. 15A-301 reads as rewritten:

"**§ 15A-301. Criminal process generally.**

(a) Formal Requirements. –

(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the ~~clerk.~~ clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.

(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

(b) To Whom Directed. – Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(c) Service. –

(1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving ~~criminal process~~ for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(d) Return. –

(1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.

(2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.

a. Warrant for arrest – 180 days.

b. Order for arrest – 180 days.

c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.

(3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).

(4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

(e) Copies to Be Made by Clerk. –

(1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).

(2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.

(3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.

(4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

(f) Protection of Process Server. – An officer or other employee designated as provided in subsection (b), and serving process as provided in subsection (b), receiving under this section or under G.S. 15A-301.1 criminal process which is complete and regular on its face may serve the process in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

(1) A warrant or criminal summons shall be recalled by the issuing judicial official when that official determines that probable cause did not exist for its issuance.

(2) Any criminal process other than a warrant or criminal summons may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:

a. A copy of the process has been served on the defendant.

b. All charges on which the process is based have been disposed.

c. The person named as the defendant in the process is not the person who committed the charged offense.

d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.

(3) The disposition of all charges on which a process is based shall effect the recall, without further action by the court, of that process and of all other outstanding process issued in connection with the charges, including all orders for arrest issued for the defendant's failure to appear to answer the charges.

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each agency that is known to be in possession of a copy of the process in paper form and that does not have remote electronic access to the Electronic Repository."

SECTION 4. This act becomes effective January 1, 2003, and applies to all acts done on and after that date.

MINUTES
HOUSE COMMITTEE ON JUDICIARY III

July 2, 2002

The House Committee on Judiciary III met on Tuesday, July 2, 2002, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin; Vice-Chairman Daniel Barefoot; Representative(s) Bell, Capps, Mark Crawford, Daughtry, Fox, Hensley, Holmes, Jarrell, Kiser, and Weatherly. Brenda Carter and Dianna Jessup, Committee Counsel were in attendance. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bill:

The Chair recognized Representative Tolson, sponsor of the bill, to explain House Bill 1501, A BILL TO BE ENTITLED AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER. Representative Tolson offered a proposed committee substitute for HB 1501 (ATTACHMENT). Representative Mark Crawford made a motion for adoption of the PCS for the purpose of discussion. The motion carried. Representative Tolson was then recognized to explain the PCS. After much discussion of the PCS for HB 1501, Representative Daughtry sent forth a proposed amendment to change the title of the PCS to A BILL TO BE ENTITLED AN ACTand moved for the adoption of the amendment. The motion carried. (AMENDMENT ATTACHED). There was no vote taken on the PCS for HB 1501, as amended, and it will be placed on the agenda of the next Judiciary III meeting.

There being no further business, the Chair adjourned the meeting at 12:45 pm.

Respectfully Submitted,

Representative Wayne Goodwin
Chairman, House Judiciary III

Jennifer Cotten
Committee Assistant

Attachments

NORTH CAROLINA HOUSE OF REPRESENTATIVES
2002 SHORT SESSION

JUDICIARY III
COMMITTEE MEETING NOTICE & BILL SPONSOR NOTICE

*You are hereby notified that the Committee on **JUDICIARY III** will meet as follows:*

Date: Tuesday, July 2, 2002

Time: 12:00 Noon

Place: Room 421 LOB

The following bills will be considered.

HB 1501 **FELONY ACCESS TO GOVERNMENT COMPUTERS**
Representative Joe Tolson

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant, at the following offices at 2:00 pm on July 1, 2002.

___Principal Clerk
___Reading Clerk - House Chamber

Jenny Cotten (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 2, 2002
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1501 FELONY ACCESS TO GOVERNMENT COMPUTERS
Representative Joe Tolson

ADJOURNMENT

VISITOR REGISTRATION SHEET

House Judiciary III — **Name of Committee**

Tuesday, July 02, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wm C McKinney	NC DOC
Letitia Withrow	NC StateWatch
Cam Cavel	BPOHL
Jo McCants	AOC
Bill Scoggin	Kennedy Covington
John Palenchar	AT&T
Denny McGuire	ITS/IRM
Katherine Davis	Electricities
Tom Jarrell	District Court Judge
Stuart Albright	Guilford County District Attorney
John Phelps	NCLM
Patrick Arnold	House Intern

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1501*

Short Title:	Felonious Access to Government Computers.	(Public)
Sponsors:	Representative Tolson.	
Referred to:	Judiciary III.	

June 3, 2002

A BILL TO BE ENTITLED

AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-453 is amended by adding a new subdivision to read:

"(7a) "Government computer" means any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any State or local governmental entity."

SECTION 2. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-454.1. Accessing government computers.**

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any government computer for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, or

(2) Obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

A violation of this subsection is a Class E felony.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class G felony.

(c) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer is guilty of a Class 1 misdemeanor.

(d) For the purpose of this section the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 3. G.S. 14-455 is amended by adding a new subsection to read:

"(a1) It is unlawful to willfully and without authorization alter, damage, or destroy a government computer. A violation of this subsection is a Class G felony. "

SECTION 4. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-456.1. Denial of government computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of government computer services is guilty of a Class G felony. For the purposes of this section, the term "government computer service" means any service provided or performed by a government computer as defined in G.S. 14-454.1.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network. "

SECTION 5. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1501
PROPOSED COMMITTEE SUBSTITUTE H1501-CSRV-32 [v.2]

7/2/2002 11:02:55 AM

Short Title: Felonious Access to Government Computers. (Public)

Sponsors:

Referred to:

June 3, 2002

A BILL TO BE ENTITLED

AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-453 is amended by adding a new subdivision to read:

"(7a) "Government computer" means any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any State or local governmental entity."

SECTION 2. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-453.1. Exceptions.**

This Article does not apply to or prohibit:

(1) Any terms or conditions in a contract or license related to a computer, computer network, software, computer system, database or telecommunication device; or

(2) Any software or hardware designed to allow a computer, computer network, software, computer system, database, information or telecommunication service to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data, information or rights in it.

SECTION 3. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-454.1. Accessing government computers.**

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any government computer for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, or

(2) Obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

A violation of this subsection is a Class F felony.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

(c) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer is guilty of a Class 1 misdemeanor.

(d) For the purpose of this section the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 4. G.S. 14-455 is amended by adding a new subsection to read:

"(a1) It is unlawful to willfully and without authorization alter, damage, or destroy a government computer. A violation of this subsection is a Class F felony. "

SECTION 5. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-456.1. Denial of government computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of government computer services is guilty of a Class H felony. For the purposes of this section, the term "government computer service" means any service provided or performed by a government computer as defined in G.S. 14-454.1.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network. "

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

HOUSE BILL 1501:
FELONY ACCESS TO GOV'T COMPUTERS

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Joe Tolson
Date:	July 2, 2002	**Summary by:**	Brenda J. Carter
Version:	H1501-CSRV-32		Committee Counsel

SUMMARY: House Bill 1501 makes it a felony to access a government computer for fraudulent or related activity or to cause a denial of service affecting a government computer. The bill is a recommendation of the Joint Legislative Committee on Information Technology. The proposed committee substitute makes adjustments to the felony classification levels in the bill and creates an exemption for acts performed in accordance with software or hardware licensing agreements.

CURRENT LAW: Article 60 of Chapter 14 of the General Statutes sets out the law regarding computer-related crime. Under G.S. 14-454, it is unlawful to willfully and without authorization access or cause to be accessed any computer, computer program, computer system, computer network, or any part thereof. In the event the unlawful act is done for the purpose of devising or executing any scheme or artifice to defraud, or to obtain property or services by means of false or fraudulent pretenses, representations or promises: the violation is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars ($1,000), or if the property or services obtained are worth more than one thousand dollars ($1,000). Any other violation, including those involving educational testing material, a false educational testing score, or a false academic or vocational grade, is a Class 1 misdemeanor. For purposes of the statute, the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network. Under G.S. 14-455, it is unlawful to willfully and without authorization damage computers or computer programs, systems, networks, and resources. Again, violation is a Class G felony if the unlawful act results in damage of more than one thousand dollars ($1,000); any other violation is a Class 1 misdemeanor. Under G.S. 14-456, any person who willfully and without authorization denies or causes the denial of computer services to an authorized services is guilty of a Class 1 misdemeanor. Both G.S. 14-455 and 14-456 apply to damages or interruptions in service caused by the introduction of a "virus" into a computer system or network.

BILL ANALYSIS: House Bill 1501 would enact new provisions specifically applicable to crimes targeting government computers, under which penalties for criminal conduct involving a government computer would be greater than those now applicable under current law.

Section 1 of the bill defines "government computer" as one owned, operated or used by any State or local governmental entity.

Section 2 of the bill creates an exemption for activities related to services performed under software/hardware licensing agreements.

Section 3 of the bill creates a new statute that makes it unlawful to willfully access a government computer for the purpose of devising or executing a fraud or obtaining property or services by false

pretenses. The new statute tracks a similar provision in G.S. 14-454; however, if the unlawful act is done for the purpose of devising or executing a fraud, or to obtain property or services by means of false or fraudulent pretenses, the violation would be a Class F felony regardless of the value of the property or services obtained. Any other violation, except for those involving educational testing material, a false educational testing score, or a false academic or vocational grade, would be a Class H felony. *(Under current law the offense would be a Class G felony if damage is more than $1,000; otherwise a Class 1 misdemeanor).* The Class 1 misdemeanor is retained for violations involving educational testing material, a false educational testing score, or a false academic or vocational grade.

Section 4 of the bill amends G.S. 14-455, which makes it unlawful to damage computers or computer programs, systems, networks, and resources. This section of the bill provides increased penalties for altering, damaging, or destroying a government computer. (*Under current law, a violation of G.S. 14-455 is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars ($1,000); any other violation is a Class 1 misdemeanor.)* Under House Bill 1501, any violation of G.S. 14-455 involving a government computer would be a Class F felony regardless of the dollar amount of the damages.

Section 5 of the bill adds a new statute to provide that any person who willfully and without authorization denies or causes the denial of computer, computer program, computer system, or computer network services to an authorized user of the computer, computer program, computer system, or computer network services is guilty of a Class H felony. *(Under existing law, the offense is a Class 1 misdemeanor).*

The bill would become effective December 1, 2002 and apply to offenses committed on or after that date.

BACKGROUND: The Joint Select Committee on Information Technology was established by the General Assembly to review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The Committee is directed to coordinate the use of information technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. One of the Committee's recommendations to the 2002 Session was that penalties be increased for persons who unlawfully access government computers. The rationale for the bill is that security of all data stored by or on behalf of State agencies is a high priority, and State government must be responsive and effective in addressing breaches of its information technology systems.

The N.C. Sentencing Commission is required by statute to review all legislation that creates a new offense, changes the classification of an offense, or changes the range of punishment for an existing offense. In its June 2002 report on proposed legislation, the Sentencing Commission found that the changes proposed in House Bill 1501 as introduced were inconsistent with Offense Classification Criteria. This committee substitute makes changes to bring the offense classifications in line with the criteria. The relevant portion of the Sentencing Commission Report is attached to this summary. In accordance with G.S. 120-36.7, the Fiscal Research Division has prepared a fiscal note to identify and estimate any net increase in the length of time for which persons are incarcerated or the number of persons incarcerated. A copy of the fiscal note for House Bill 1501 is attached to this summary.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Significant societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 – FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-454.1. Accessing government computers.

DESCRIPTION

Subsection (a):

A person who

1. willfully
2. directly or indirectly accesses or causes to be accessed
3. a government computer
4. For the purpose of :
   (a) devising or executing any scheme or artifice to defraud, or
   (b) obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious personal injury as Class E felonies.

G.S. § 14-454(a), Accessing Computers, which deals with similar conduct for any computer, is a Class G felony if it results in damage of more than $1,000 dollars, otherwise a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

■ Bill is **inconsistent** with Offense Classification Criteria

A Class E felony tends to result in serious personal injury. This offense does not appear to result in serious personal injury. However, the offense would be consistent with the Offense Classification Criteria for Class F. A Class F felony tends to result in serious societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-454.1. Accessing government computers.

DESCRIPTION

Subsection (b):

A person who

1. willfully
2. without authorization
3. directly or indirectly accesses or causes to be accessed
4. any government computer
5. for any purpose other than those set forth in subsection (a).

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-454(b), Accessing Computers, which deals with similar conduct for any computer, is a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

☒ Bill is **inconsistent** with Offense Classification Criteria

A Class G felony tends to result in serious property loss from the person or the person's dwelling. This offense does not appear to result in serious property loss from the person or the person's dwelling. However, the offense would be consistent with the Offense Classification Criteria for Class F. A Class F felony tends to result in serious societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-455. Damaging computers, computer programs, computer systems, computer networks, and resources.

DESCRIPTION

Adds subsection (a1):
A person who

1. willfully
2. without authorization
3. (a) alters,
   (b) damages, or
   (c) destroys
4. a government computer.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-455(a), Damaging computers, etc., which deals with similar conduct for any computer, is a Class G felony if it results in damage of more than $1,000 dollars, otherwise a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

■ Bill is **inconsistent** with Offense Classification Criteria

A Class G felony tends to result in serious property loss from the person or the person's dwelling. This offense does not appear to result in serious property loss from the person or the person's dwelling. However, the offense would be consistent with the Offense Classification Criteria for Class F, Class H, or Class I. A Class F felony tends to result in serious societal injury, a Class H felony tends to result in significant societal injury, and a Class I felony tends to result in societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-456.1. Denial of government computer services to an authorized user.

DESCRIPTION

A person who

1. willfully
2. without authorization
3. denies or causes the denial of
4. government computer services.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-456, Denial of computer services to an authorized user, which deals with similar conduct for any computer, is a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

☒ Bill is **inconsistent** with Offense Classification Criteria

DATE PREPARED: 6/7/02

IMPACT OF BILL ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1501/SB 1168: FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill.

G.S. 14-454.1

In FY 2000/01 there were no Class G felony convictions and 6 Class 1 misdemeanor convictions under G.S. 14-454(a) and (b), which covers similar conduct.

If, for example, there were 2 Class E convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 3 additional prison beds the second year due to active sentences and probation revocations.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

G.S. 14-455

In FY 2000/01 there were no Class G felony or Class 1 misdemeanor convictions under G.S. 14-455(a), which covers similar conduct.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

G.S. 14-456.1

The Administrative Office of the Courts (AOC) does not have a specific offense code for conduct currently illegal under G.S. 14-456, which covers similar conduct. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2000/2001 Felony and Misdemeanor Simulation Data

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB1501 1st Edition

SHORT TITLE: Felonious Access to Government Computers

SPONSOR(S): Rep. Tolson

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ()**

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
GENERAL FUND					
Correction		**No estimate available**			
Recurring					
Nonrecurring					
Judicial		**Exact amount cannot be determined**			
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:	**0**	**0**	**0**	**0**	**0**
ADDITIONAL PRISON BEDS*					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2002

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Creates a criminal offense of accessing government computers for fraudulent purposes or to deny service to an authorized computer user. Currently, it is a Class G felony to access computers for fraudulent purposes. This act creates the special case of accessing government computers with a Class E offense class.

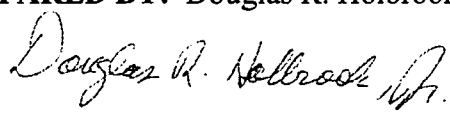
ASSUMPTIONS AND METHODOLOGY:
Administrative Office of the Courts (AOC): The AOC expects that the enhanced penalties associated with this bill would result in a greater number of trials and pleas, requiring greater court time. In CY 2001, 12 defendants were charged with misdemeanor violations of the statute and 31 defendants were charged with the Class G felony. None of the felony charges resulted in convictions as felonies. There were six misdemeanor convictions.

Department of Correction: The Sentencing Commission would not expect any prison impact based on the changes to G.S. 14-454.1 or 14-455 but is not able to make projections for any impact from 14-456.1.

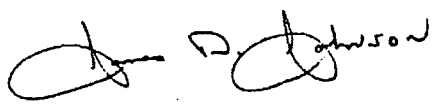
SOURCES OF DATA: Judicial Branch and the North Carolina Sentencing and Policy Advisory Commission.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas R. Holbrook Jr.



APPROVED BY: James D. Johnson



DATE: June 27, 2002

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1501 DATE 7/2/02

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Sen.) Daughtry

moves to amend the bill on page 1, line 5 2-4

(✓ WHICH CHANGES THE TITLE

by "AN ACT CONCERNING UNLAWFUL ACCESS OR DAMAGE TO A GOVERNMENT COMPUTER OR CAUSING DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1501
PROPOSED COMMITTEE SUBSTITUTE H1501-CSRV-32 [v.3]

7/9/2002 9:13:15 AM

Short Title: Felonious Access to Government Computers. (Public)

Sponsors:

Referred to:

June 3, 2002

A BILL TO BE ENTITLED

AN ACT CONCERNING UNLAWFUL ACCESS OR DAMAGE TO A GOVERNMENT COMPUTER OR CAUSING DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-453 is amended by adding a new subdivision to read:

"(7a) "Government computer" means any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any State or local governmental entity."

SECTION 2. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-453.1. Exceptions.**

This Article does not apply to or prohibit:

(1) Any terms or conditions in a contract or license related to a computer, computer network, software, computer system, database or telecommunication device; or

(2) Any software or hardware designed to allow a computer, computer network, software, computer system, database, information or telecommunication service to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data, information or rights in it.

SECTION 3. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-454.1. Accessing government computers.**

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any government computer for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, or

(2) Obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

A violation of this subsection is a Class F felony.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

(c) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer is guilty of a Class 1 misdemeanor.

(d) For the purpose of this section the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 4. G.S. 14-455 is amended by adding a new subsection to read:

"(a1) It is unlawful to willfully and without authorization alter, damage, or destroy a government computer. A violation of this subsection is a Class F felony."

SECTION 5. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-456.1. Denial of government computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of government computer services is guilty of a Class H felony. For the purposes of this section, the term "government computer service" means any service provided or performed by a government computer as defined in G.S. 14-454.1.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

MINUTES
HOUSE COMMITTEE ON JUDICIARY III

July 9, 2002

The House Committee on Judiciary III met on Tuesday, July 11, 2002, in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Vice-Chair Mickey Michaux, Representatives Bell, Bonner, Capps, J. Crawford, M. Crawford, Daughtry, Ellis, Esposito, Fox, Hensley, Jarrell, and Kiser. Dianna Jessup, Brenda Carter and Karen Cochrane-Brown, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Bonner moved for the adoption of purposed committee substitute (H1501-CSRV-32 [v.3]) that was adopted at the previous meeting for the purpose of discussion. The motion carried. Representative Hensley sent forth an amendment to the PCS and moved for the adoption of the amendment. (AMENDMENT ATTACHED). The motion carried. Following discussion, Representative Hensley moved that the amendments offered to HB 1501 be rolled into a Committee Substitute Bill and given a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill. The motion carried.

There being no further business, the Chair adjourned the meeting at 12:35pm.

Respectfully submitted,

Representative Wayne Goodwin
Chairman, House Judiciary III

Jennifer Cotten
Committee Assistant

Attachments

NORTH CAROLINA HOUSE OF REPRESENTATIVES
2002 SHORT SESSION

JUDICIARY III COMMITTEE MEETING NOTICE & BILL SPONSOR NOTICE

*You are hereby notified that the Committee on **JUDICIARY III** will meet as follows:*

Date: Tuesday, July 9, 2002

Time: 12:00 Noon

Place: Room 421 LOB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HOUSE BILL 1501 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS
Representative Joe Tolson

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant at the following offices at **1:45** on **July 8, 2002.**

___Principal Clerk
___Reading Clerk - House Chamber

Jenny Cotten (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

July 9, 2002
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1501 FELONIOUS ACCESS TO GOVERNMENT COMPUTERS
Representative Joe Tolson

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — July 9, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Denny McGuire	ITS - 3512 Bush St. Ral
John McKnight	GOV OFFICE
Cam Cowell	BPMHC
Cetitia Withrow	NC State Watch
John Henning	NC Bar Assoc.
Patrick Arnold	House Intern
Peter Garriglian	NCGA (CISO)
John McKnight	governor's office

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1501
PROPOSED COMMITTEE SUBSTITUTE H1501-CSRV-32 [v.3]

7/9/2002 9:13:15 AM

Short Title: Felonious Access to Government Computers. (Public)

Sponsors:

Referred to:

June 3, 2002

A BILL TO BE ENTITLED

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A violation of this subsection is a Class F felony.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

(c) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer is guilty of a Class 1 misdemeanor.

(d) For the purpose of this section the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 4. G.S. 14-455 is amended by adding a new subsection to read:

"(a1) It is unlawful to willfully and without authorization alter, damage, or destroy a government computer. A violation of this subsection is a Class F felony. "

SECTION 5. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-456.1. Denial of government computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of government computer services is guilty of a Class H felony. For the purposes of this section, the term "government computer service" means any service provided or performed by a government computer as defined in G.S. 14-454.1.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network. "

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

HOUSE BILL 1501:
FELONY ACCESS TO GOV'T COMPUTERS

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Joe Tolson
Date:	July 2, 2002	**Summary by:**	Brenda J. Carter
Version:	H1501-CSRV-32		Committee Counsel

SUMMARY: House Bill 1501 makes it a felony to access a government computer for fraudulent or related activity or to cause a denial of service affecting a government computer. The bill is a recommendation of the Joint Legislative Committee on Information Technology. The proposed committee substitute makes adjustments to the felony classification levels in the bill and creates an exemption for acts performed in accordance with software or hardware licensing agreements.

CURRENT LAW: Article 60 of Chapter 14 of the General Statutes sets out the law regarding computer-related crime. Under G.S. 14-454, it is unlawful to willfully and without authorization access or cause to be accessed any computer, computer program, computer system, computer network, or any part thereof. In the event the unlawful act is done for the purpose of devising or executing any scheme or artifice to defraud, or to obtain property or services by means of false or fraudulent pretenses, representations or promises: the violation is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars ($1,000), or if the property or services obtained are worth more than one thousand dollars ($1,000). Any other violation, including those involving educational testing material, a false educational testing score, or a false academic or vocational grade, is a Class 1 misdemeanor. For purposes of the statute, the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network. Under G.S. 14-455, it is unlawful to willfully and without authorization damage computers or computer programs, systems, networks, and resources. Again, violation is a Class G felony if the unlawful act results in damage of more than one thousand dollars ($1,000); any other violation is a Class 1 misdemeanor. Under G.S. 14-456, any person who willfully and without authorization denies or causes the denial of computer services to an authorized services is guilty of a Class 1 misdemeanor. Both G.S. 14-455 and 14-456 apply to damages or interruptions in service caused by the introduction of a "virus" into a computer system or network.

BILL ANALYSIS: House Bill 1501 would enact new provisions specifically applicable to crimes targeting government computers, under which penalties for criminal conduct involving a government computer would be greater than those now applicable under current law.

Section 1 of the bill defines "government computer" as one owned, operated or used by any State or local governmental entity.

Section 2 of the bill creates an exemption for activities related to services performed under software/hardware licensing agreements.

Section 3 of the bill creates a new statute that makes it unlawful to willfully access a government computer for the purpose of devising or executing a fraud or obtaining property or services by false

pretenses. The new statute tracks a similar provision in G.S. 14-454; however, if the unlawful act is done for the purpose of devising or executing a fraud, or to obtain property or services by means of false or fraudulent pretenses, the violation would be a Class F felony regardless of the value of the property or services obtained. Any other violation, except for those involving educational testing material, a false educational testing score, or a false academic or vocational grade, would be a Class H felony. *(Under current law the offense would be a Class G felony if damage is more than $1,000; otherwise a Class 1 misdemeanor).* The Class 1 misdemeanor is retained for violations involving educational testing material, a false educational testing score, or a false academic or vocational grade.

Section 4 of the bill amends G.S. 14-455, which makes it unlawful to damage computers or computer programs, systems, networks, and resources. This section of the bill provides increased penalties for altering, damaging, or destroying a government computer. *(Under current law, a violation of G.S. 14-455 is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars ($1,000); any other violation is a Class 1 misdemeanor.)* Under House Bill 1501, any violation of G.S. 14-455 involving a government computer would be a Class F felony regardless of the dollar amount of the damages.

Section 5 of the bill adds a new statute to provide that any person who willfully and without authorization denies or causes the denial of computer, computer program, computer system, or computer network services to an authorized user of the computer, computer program, computer system, or computer network services is guilty of a Class H felony. *(Under existing law, the offense is a Class 1 misdemeanor).*

The bill would become effective December 1, 2002 and apply to offenses committed on or after that date.

BACKGROUND: The Joint Select Committee on Information Technology was established by the General Assembly to review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The Committee is directed to coordinate the use of information technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. One of the Committee's recommendations to the 2002 Session was that penalties be increased for persons who unlawfully access government computers. The rationale for the bill is that security of all data stored by or on behalf of State agencies is a high priority, and State government must be responsive and effective in addressing breaches of its information technology systems.

The N.C. Sentencing Commission is required by statute to review all legislation that creates a new offense, changes the classification of an offense, or changes the range of punishment for an existing offense. In its June 2002 report on proposed legislation, the Sentencing Commission found that the changes proposed in House Bill 1501 as introduced were inconsistent with Offense Classification Criteria. This committee substitute makes changes to bring the offense classifications in line with the criteria. The relevant portion of the Sentencing Commission Report is attached to this summary. In accordance with G.S. 120-36.7, the Fiscal Research Division has prepared a fiscal note to identify and estimate any net increase in the length of time for which persons are incarcerated or the number of persons incarcerated. A copy of the fiscal note for House Bill 1501 is attached to this summary.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder

[Reasonably tends to result or does result in]:

B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Significant societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-454.1. Accessing government computers.

DESCRIPTION

Subsection (a):

A person who

1. willfully
2. directly or indirectly accesses or causes to be accessed
3. a government computer
4. For the purpose of :
   (a) devising or executing any scheme or artifice to defraud, or
   (b) obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious personal injury as Class E felonies.

G.S. § 14-454(a), Accessing Computers, which deals with similar conduct for any computer, is a Class G felony if it results in damage of more than $1,000 dollars, otherwise a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

■ Bill is **inconsistent** with Offense Classification Criteria

A Class E felony tends to result in serious personal injury. This offense does not appear to result in serious personal injury. However, the offense would be consistent with the Offense Classification Criteria for Class F. A Class F felony tends to result in serious societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-454.1. Accessing government computers.

DESCRIPTION

Subsection (b):

A person who

1. willfully
2. without authorization
3. directly or indirectly accesses or causes to be accessed
4. any government computer
5. for any purpose other than those set forth in subsection (a).

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-454(b), Accessing Computers, which deals with similar conduct for any computer, is a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

☒ Bill is **inconsistent** with Offense Classification Criteria

A Class G felony tends to result in serious property loss from the person or the person's dwelling. This offense does not appear to result in serious property loss from the person or the person's dwelling. However, the offense would be consistent with the Offense Classification Criteria for Class F. A Class F felony tends to result in serious societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-455. Damaging computers, computer programs, computer systems, computer networks, and resources.

DESCRIPTION

Adds subsection (a1):
A person who

1. willfully
2. without authorization
3. (a) alters,
   (b) damages, or
   (c) destroys
4. a government computer.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-455(a), Damaging computers, etc., which deals with similar conduct for any computer, is a Class G felony if it results in damage of more than $1,000 dollars, otherwise a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

■ Bill is **inconsistent** with Offense Classification Criteria

A Class G felony tends to result in serious property loss from the person or the person's dwelling. This offense does not appear to result in serious property loss from the person or the person's dwelling. However, the offense would be consistent with the Offense Classification Criteria for Class F, Class H, or Class I. A Class F felony tends to result in serious societal injury, a Class H felony tends to result in significant societal injury, and a Class I felony tends to result in societal injury.

DATE PREPARED: 6/7/02

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

ANALYSIS OF BILL TO CREATE A NEW OFFENSE
(PREPARED PURSUANT TO G.S. 164-43)

BILL NUMBER/SHORT TITLE: HB 1501/SB 1168 - FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

STATUTE

§ 14-456.1. Denial of government computer services to an authorized user.

DESCRIPTION

A person who

1. willfully
2. without authorization
3. denies or causes the denial of
4. government computer services.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

The Sentencing Commission classified offenses which tend to result in or do result in serious property loss from the person or the person's dwelling as Class G felonies.

G.S. § 14-456, Denial of computer services to an authorized user, which deals with similar conduct for any computer, is a Class 1 misdemeanor.

FINDINGS

☐ Bill is **consistent** with Offense Classification Criteria

■ Bill is **inconsistent** with Offense Classification Criteria

DATE PREPARED: 6/7/02

IMPACT OF BILL ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission's Offense Classification Criteria does not imply either support or opposition to the bill itself.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1501/SB 1168: FELONIOUS ACCESS TO GOVERNMENT COMPUTERS

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill.

G.S. 14-454.1

In FY 2000/01 there were no Class G felony convictions and 6 Class 1 misdemeanor convictions under G.S. 14-454(a) and (b), which covers similar conduct.

If, for example, there were 2 Class E convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 3 additional prison beds the second year due to active sentences and probation revocations.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

G.S. 14-455

In FY 2000/01 there were no Class G felony or Class 1 misdemeanor convictions under G.S. 14-455(a), which covers similar conduct.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

G.S. 14-456.1

The Administrative Office of the Courts (AOC) does not have a specific offense code for conduct currently illegal under G.S. 14-456, which covers similar conduct. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

If, for example, there were 2 Class G convictions for this offense per year, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year due to active sentences and probation revocations.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2000/2001 Felony and Misdemeanor Simulation Data

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB1501 1st Edition

SHORT TITLE: Felonious Access to Government Computers

SPONSOR(S): Rep. Tolson

FISCAL IMPACT

Yes (x) No ( ) No Estimate Available ()

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
GENERAL FUND					
Correction		**No estimate available**			
Recurring					
Nonrecurring					
Judicial		**Exact amount cannot be determined**			
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:	**0**	**0**	**0**	**0**	**0**
ADDITIONAL PRISON BEDS*					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 2002

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Creates a criminal offense of accessing government computers for fraudulent purposes or to deny service to an authorized computer user. Currently, it is a Class G felony to access computers for fraudulent purposes. This act creates the special case of accessing government computers with a Class E offense class.

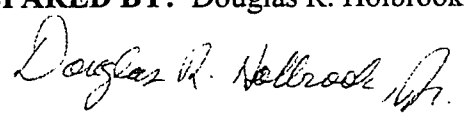
ASSUMPTIONS AND METHODOLOGY:
Administrative Office of the Courts (AOC): The AOC expects that the enhanced penalties associated with this bill would result in a greater number of trials and pleas, requiring greater court time. In CY 2001, 12 defendants were charged with misdemeanor violations of the statute and 31 defendants were charged with the Class G felony. None of the felony charges resulted in convictions as felonies. There were six misdemeanor convictions.

Department of Correction: The Sentencing Commission would not expect any prison impact based on the changes to G.S. 14-454.1 or 14-455 but is not able to make projections for any impact from 14-456.1.

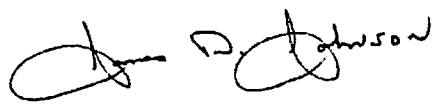
SOURCES OF DATA: Judicial Branch and the North Carolina Sentencing and Policy Advisory Commission.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Douglas R. Holbrook Jr.



APPROVED BY: James D. Johnson



DATE: June 27, 2002

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1501

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1501-ARV-32 [v.1]

Date _____ ,2002

Comm. Sub. [YES]
Amends Title [NO]
H1501-CSRV-32

Representative Hensley

moves to amend the bill on page 1, lines 20 and 21,
by inserting between those lines the following:

"**SECTION 3.** Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"'**§ 14-453.2 Jurisdiction.**

Any offense under this Article committed by the use of electronic communication may be deemed to have been committed where the electronic communication was originally sent or where it was originally received in this State. "Electronic communication" means the same as the term is defined in G.S. 14-196.3(a)."

And by renumbering the remaining sections of the bill accordingly.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative**Goodwin** (Chair) for the Committee on **JUDICIARY III**.

☐ Committee Substitute for
H.B. 1501 A BILL TO BE ENTITLED AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill, ☒ which changes the title, unfavorable as to (the original bill)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1501
PROPOSED COMMITTEE SUBSTITUTE H1501-PCS7389-RV-32

Short Title: Felonious Access to Government Computers. (Public)

Sponsors:

Referred to:

June 3, 2002

A BILL TO BE ENTITLED

AN ACT CONCERNING UNLAWFUL ACCESS OR DAMAGE TO A GOVERNMENT COMPUTER OR CAUSING DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-453 is amended by adding a new subdivision to read:

"(7a) "Government computer" means any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any State or local governmental entity."

SECTION 2. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-453.1. Exceptions.**

This Article does not apply to or prohibit:

(1) Any terms or conditions in a contract or license related to a computer, computer network, software, computer system, database, or telecommunication device; or

(2) Any software or hardware designed to allow a computer, computer network, software, computer system, database, information, or telecommunication service to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data, information, or rights in it.

SECTION 3. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-453.2. Jurisdiction.**

Any offense under this Article committed by the use of electronic communication may be deemed to have been committed where the electronic communication was originally sent or where it was originally received in this State. 'Electronic communication' means the same as the term is defined in G.S. 14-196.3(a)."

SECTION 4. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-454.1. Accessing government computers.**

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any government computer for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, or

(2) Obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

A violation of this subsection is a Class F felony.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

(c) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer is guilty of a Class 1 misdemeanor.

(d) For the purpose of this section the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 5. G.S. 14-455 is amended by adding a new subsection to read:

"(a1) It is unlawful to willfully and without authorization alter, damage, or destroy a government computer. A violation of this subsection is a Class F felony."

SECTION 6. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-456.1. Denial of government computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of government computer services is guilty of a Class H felony. For the purposes of this section, the term "government computer service" means any service provided or performed by a government computer as defined in G.S. 14-454.1.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

SECTION 7. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

MINUTES
HOUSE COMMITTEE ON JUDICIARY III

August 27, 2002

The House Committee on Judiciary III met on Tuesday, August 27, 2002 in Room 421 of the Legislative Office Building at 12:00 Noon. The following members were present: Chairman Wayne Goodwin, Vice-Chair Daniel Barefoot, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Ellis, Esposito, Fox, Hensley, Kiser and Russell. Karen Cochran-Brown, Dianna Jessup and Brenda Carter, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

The Chair recognized Representative Bonner, sponsor of the bill, to explain House Bill 1646, AN ACT TO GRANT ARREST POWERS TO THE TOWN OF ROWLAND IN CERTAIN AREAS. Following discussion, Representative Barefoot moved that the House committee on Judiciary III recommend concurrence on HB 1646. Mr. Eddie Caldwell, a lobbyist for the N.C. Sheriff's Association was recognized to state the Sheriff's Association position on the bill. Mr. Caldwell stated that the N.C. Sheriff's Association asks the committee not to concur on HB 1646. Representative Barefoot withdrew his previous motion to concur and moved for the committee not to concur with HB 1646 and to send it to conference committee. The Chair recognized Representative Hensley for a motion. Representative Hensley moved to postpone HB 1646 indefinitely. After consulting with Hal Pell and other Research staff, the Chair ruled Representative Hensley's motion out of order due to the fact that HB 1646 was presented to the Judiciary III committee for concurrence, therefore a motion to concur or not concur is the only appropriate motion. Representative Ellis then moved for the committee to recommend concurrence. The Chair recognized Representative Ellis to withdraw his previous motion of concurrence. The Chair took a vote on Representative Barefoot's motion to not concur with HB 1646. A five to six vote to not concur was accepted and the motion to not concur on HB 1646 failed. The bill will be placed on the agenda of the next Judiciary III meeting.

Pursuant to House Rule 36(a); all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered. Representative Mark Crawford moved to postpone indefinitely House Bill 425, AN ACT TO PROVIDE FOR THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS ON STOPS MADE BY CERTAIN LOCAL LAW ENFORCEMENT AGENCIES, and House Bill 548, AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION. The motion carried and HB 425 and HB 548 were postponed indefinitely.

House Bill 985, A BILL ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID, will be placed on the agenda of the next Judiciary III committee meeting.

There being no further business, the Chair adjourned the meeting at 1:15pm.

Respectfully submitted,

Wayne Goodwin

Representative Wayne Goodwin
Chairman, House Judiciary III

Jennifer Cotten
Committee Assistant

Attachments

CORRECTED COMMITTEE NOTICE!

NORTH CAROLINA HOUSE OF REPRESENTATIVES
2002 SHORT SESSION

JUDICIARY III
COMMITTEE MEETING NOTICE & BILL SPONSOR NOTICE

*You are hereby notified that the Committee on **JUDICIARY III** will meet as follows:*

Date: Tuesday, August 27, 2002

Time: 12:00 Noon

Place: Room 421 LOB

The following bills will be considered.

HB 1646 **ROWLAND ARREST JURISDICTION**
Representative Bonner

The following are bills that are left in the Judiciary III committee that didn't make the crossover deadline. Pursuant to House Rule 36(a), *all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee...,* the Chairman will call for a vote for the bills to be postponed indefinitely.

HB 425 **TRAFFIC LAW ENFORCEMENT STATISTICS**
Representative Adams

HB 548 **ABOLISH ALIEN. AFFECT./CRIM.CONV.**
Representative Willingham

HB 985 **OUT-OF-STATE HANDGUN PERMITS VALID**
Representative Hilton

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant, at the following offices at 2:00 pm on August 26, 2002.

___Principal Clerk
___Reading Clerk - House Chamber

Jenny Cotten (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

August 27, 2002
Room 421 LOB
12:00 Noon

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

HB 1646	ROWLAND ARREST JURISDICTION Representative Bonner
HB 425	TRAFFIC LAW ENFORCEMENT STATISTICS Representative Adams
HB 548	ABOLISH ALIEN. AFFECT. /CRIM. CONV. Representative Michaux
HB 985	OUT-OF-STATE HANDGUN PERMITS VALID Representative Hilton

ADJOURNMENT

VISITOR REGISTRATION SHEET

Judiciary III — August 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Hafer & Caldwell, P.A.
Cam Covey	BPMHC
Brian Francis	Meck Cnty
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
Joshua Freeman	Page
Michelle Fralier	NC Bar Ass'n
Andy Romanet	NCLM
Jere Royall	NC Family Policy Council
John Rustin	NCFPC
Gary Mickey	CCPS
Eddie Caldwell	HJC,

VISITOR REGISTRATION SHEET

Judiciary III — August 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	Kennedy Covington
Stephanie Mann	NCAR
Barbara S. Carlton	MPS
Anne A. Wimsatt	NCAE
Mark Teasley	Crystal Troop

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1646

Senate Finance Committee Substitute Adopted 7/24/02

Short Title: Rowland Arrest Jurisdiction. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO GRANT ARREST POWERS TO THE TOWN OF ROWLAND IN CERTAIN AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding:

(1) The one-mile limitation of G.S. 160A-286, the Town of Rowland may also exercise the powers granted by that section; and

(2) The one-mile jurisdiction of G.S. 15A-402(c), law enforcement officers of the Town of Rowland may arrest persons,

in the following described territory:

North Carolina State Highway 130: BEGINNING at the southeastern limits of the Town of Rowland and including all of the right-of-way of North Carolina State Highway 130 from the town limits in a southeasterly direction approximately 1.0 mile to the line perpendicular to the right-of-way of North Carolina State Highway 130 which includes the intersection of the northeastern right-of-way of North Carolina State Highway 130 and the southeastern right-of-way of Iona Church Road; thence from northeastern right-of-way of North Carolina State Highway 130 and including all of the right-of-way of Iona Church Road in a northeasterly direction 300 feet.

Interstate 95: Beginning at the northeastern right-of-way of North Carolina State Highway 130 and including all of the right-of-way of I-95 approximately 2.4 miles in a southwesterly direction to the South Carolina State Line.

Interstate 95 Ramps: All of the rights-of-way for exit and entrance ramps for Interstate 95 just north of the South Carolina State Line and at North Carolina State Highway 130.

United States Highways 301 and 501: Beginning at the South Carolina State Line and including all of the right-of-way of United States Highways 301 and 501 (a combined right-of-way) in a northerly direction approximately 2.1 miles to the southeastern limits of the Town of Rowland.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 1646:
Rowland Arrest Jurisdiction

BILL ANALYSIS

Committee:	House Judiciary III	**Sponsor:**	Rep. Bonner
Date:	August 27, 2002	**Analysis by:**	Dianna Jessup
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1646 is a local bill that would give the Town of Rowland arrest jurisdiction and other law enforcement jurisdiction over certain portions of State and U.S. highways that are currently outside the Town's current arrest jurisdiction. The bill would become effective when it becomes law.

CURRENT LAW: Under current law, city police officers have arrest authority over persons at any point within one mile or less from the city's boundaries. In addition, city police officers have all the powers vested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city.

BILL ANALYSIS: House Bill 1646 would grant authority to the law enforcement officers of the Town of Rowland to arrest persons or otherwise exercise their law enforcement powers on portions of NC State Highway 130, Interstate 95, Interstate 95 ramps, and US Highways 301 and 501. With the additional authority, officers will be able to pursue suspects, perform searches, and exercise other law enforcement powers in these areas.

At least three other towns have this kind of additional law enforcement jurisdiction - Kenansville, Pinehurst, and Norwood.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 425*

Short Title:	Traffic Law Enforcement Statistics.	(Public)
Sponsors:	Representatives Adams; Hall, McAllister, Michaux, and Womble.	
Referred to:	Highway Safety & Law Enforcement.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS ON STOPS MADE BY CERTAIN LOCAL LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-10(2a) reads as rewritten:

"(2a) To collect, correlate, and maintain the following information regarding traffic law enforcement by ~~State~~ law enforcement officers:

a. The number of drivers stopped for routine traffic enforcement by ~~State~~ law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued;

b. Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender;

c. The alleged traffic violation that led to the stop;

d. Whether a search was instituted as a result of the stop;

e. Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched;

f. Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion;

g. Whether any contraband was found and the type and amount of any such contraband;

h. Whether any written citation or any oral or written warning was issued as a result of the stop;

i. Whether an arrest was made as a result of either the stop or the search;

j. Whether any property was seized, with a description of that property;

k. Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers;

l. Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason;

m. Whether any injuries resulted from the stop;

n. Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation; and

o. The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.

For purposes of this subdivision, "law enforcement officer" means:

1. All State law enforcement officers;
2. Law enforcement officers employed by county sheriffs or county police departments;
3. Law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons; and
4. Law enforcement officers employed by police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population.

The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision.

The identity of the law enforcement officer making the stop required by sub-subdivision a. of this subdivision may be accomplished by assigning anonymous identification numbers to each officer in an agency. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court."

SECTION 2. The Division of Criminal Statistics shall establish a procedure and a schedule for the reporting of the information required by this act to the Division. The Division shall print and supply all forms necessary for the collection of this information and shall ensure that local governments providing the Division with this information have the option of doing so by efficient means such as electronic transmission or facsimile.

SECTION 3. This act becomes effective January 1, 2002, and applies to law enforcement actions occurring on or after that date.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Goodwin** (Chair/Chairs) for the Committee on **Judiciary III.**

☐ Committee Substitute for
H.B. 425 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS ON STOPS MADE BY CERTAIN LOCAL LAW ENFORCEMENT AGENCIES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 548

Short Title:	Abolish Alien. Affect./Crim. Conv.	(Public)
Sponsors:	Representatives Fitch, Michaux; McAllister and Insko.	
Referred to:	Judiciary III.	

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding a new section to read:

"**§ 52-13. Abolition of alienation of affection cause of action.**

The common-law cause of action for alienation of affection is abolished."

SECTION 2. Chapter 52 of the General Statutes is amended by adding a new section to read:

"**§ 52-14. Abolition of criminal conversation cause of action.**

The common-law cause of action for criminal conversation is abolished."

SECTION 3. This act is effective when it becomes law. This act does not affect cases pending when the act becomes law.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Goodwin** (Chair/Chairs) for the Committee on **Judiciary III**.

☐ Committee Substitute for
H.B. 548 A BILL TO BE ENTITLED AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 985

Committee Substitute Favorable 4/24/01

Short Title: Out-of-State Handgun Permits Valid. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID.

The General Assembly of North Carolina enacts:

SECTION 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.24. Out-of-state concealed handgun permits valid in North Carolina.**

(a) A nonresident who has a valid concealed handgun permit issued by another state of the United States to carry a concealed handgun in that state may, subject to provisions of North Carolina law, carry a concealed handgun in North Carolina, and the out-of-state permit shall be considered valid in North Carolina, if the other state grants permits pursuant to requirements substantially equal to the requirements set forth in G.S. 14-415.12.

(b) The Department of Justice shall, not later than 30 days after July 15, 2001, and not less than once every six months thereafter, make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit, and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state.

The Department of Justice shall enter into a written reciprocity agreement with the appropriate agency in each state: (i) that agrees to permit North Carolina residents to carry concealed handguns in the other state on the basis of a North Carolina-issued concealed handgun permit, or (ii) that will issue a license to carry a concealed handgun in the other state based upon a North Carolina concealed handgun permit. If a reciprocity agreement is reached, the requirement to contact the other state each six months shall be eliminated as long as the reciprocity agreement is in force. Each reciprocity agreement shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies."

SECTION 2. This act is effective when it becomes law.

MINUTES
HOUSE COMMITTEE ON JUDICIARY III

September 5, 2002

The House Committee on Judiciary III met on Thursday, September 5, 2002 in Room 421 of the Legislative Office Building at 11:20am. The following members were present: Chairman Wayne Goodwin, Representatives Bell, Bonner, Capps, Cole, J. Crawford, M. Crawford, Daughtry, Ellis, Esposito, Fox, Jarrell, Kiser, and Weatherly. Dianna Jessup and Brenda Carter, Committee Counsel were present. A Visitor Registration list is attached and made part of these minutes.

The Chairman called the meeting to order to consider the following bills:

Representative Ellis moved for House Bill 985, A BILL ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID, to be postponed indefinitely pursuant to House Rule 36(a); all House bill and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered. The motion carried and HB 985 was postponed indefinitely.

Representative Bonner moved for the adoption of Senate Bill 1123 purposed committee substitute (S1123-CSRK-22 [v.1]); A BILL TO BE ENTITLED AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS, for the purpose of discussion. Hal Pell, from the General Assembly Research Division, was recognized to explain the difference(s) between the Senate PCS and the House PCS. Mr. Pell explained that the main difference between the two PCS's is the addition of the words, "as recommended by the joint select committee on information and technology" in the title. Following discussion, Representative Ellis moved that the House Judiciary III Committee give the House committee substitute bill a favorable report, which changed the title, unfavorable as to the Senate committee substitute bill. The motion carried.

There being no further business, the Chair adjourned the meeting at 12:00 PM.

Respectfully submitted,

Representative Wayne Goodwin
Chairman, House Judiciary III

Jennifer Cotten
Committee Assistant

Attachments

NORTH CAROLINA HOUSE OF REPRESENTATIVES
2002 SHORT SESSION

JUDICIARY III
COMMITTEE MEETING NOTICE & BILL SPONSOR NOTICE

*You are hereby notified that the Committee on **JUDICIARY III** will meet as follows:*

Date: Thursday, September 5, 2002

Time: 15 Minutes After Session

Place: Room 421 LOB

The following bills will be considered.

SB 1123 **CRIMINAL UNAUTHORIZED RECORDINGS**
Senator Reeves

The following are bills that are left in the Judiciary III committee that didn't make the crossover deadline. Pursuant to House Rule 36(a), *all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee...*, the Chairman will call for a vote for the bills to be postponed indefinitely.

HB 985 **OUT-OF-STATE HANDGUN PERMITS VALID**
Representative Hilton

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify this notice was filed by the committee assistant, at the following offices at 4:30 am on September 4, 2002.

___Principal Clerk
___Reading Clerk - House Chamber

Jenny Cotten (Committee Assistant)

AGENDA

HOUSE COMMITTEE ON JUDICIARY III

September 5, 2002
Room 421 LOB
15 Minutes after Session Adjourns

OPENING REMARKS

Representative Wayne Goodwin, Chair
Judiciary III Committee

AGENDA ITEMS

SB 1123	CRIMINAL UNAUTHORIZED RECORDINGS **Senator Reeves**
HB 985	OUT-OF-STATE HANDGUN PERMITS VALID **Representative Hilton**

ADJOURNMENT

VISITOR REGISTRATION SHEET

House Judiciary III — Thursday, September 5, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Wilson	Sec of State office
Eddie Caldwell	Hafer + Caldwell, P.A.
BRUCE THOMPSON	PARKER POE ADAMS + BERNSTEIN
Richard Gusler	RIAA
Michael Houser	the insider
Katie Hunter	NC State Watch
John McKay	GOV OFFICE
Henry Jones	Attorney - Raleigh

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 985

Committee Substitute Favorable 4/24/01

Short Title: Out-of-State Handgun Permits Valid. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID.

The General Assembly of North Carolina enacts:

SECTION 1. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.24. Out-of-state concealed handgun permits valid in North Carolina.**

(a) A nonresident who has a valid concealed handgun permit issued by another state of the United States to carry a concealed handgun in that state may, subject to provisions of North Carolina law, carry a concealed handgun in North Carolina, and the out-of-state permit shall be considered valid in North Carolina, if the other state grants permits pursuant to requirements substantially equal to the requirements set forth in G.S. 14-415.12.

(b) The Department of Justice shall, not later than 30 days after July 15, 2001, and not less than once every six months thereafter, make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit, and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state.

The Department of Justice shall enter into a written reciprocity agreement with the appropriate agency in each state: (i) that agrees to permit North Carolina residents to carry concealed handguns in the other state on the basis of a North Carolina-issued concealed handgun permit, or (ii) that will issue a license to carry a concealed handgun in the other state based upon a North Carolina concealed handgun permit. If a reciprocity agreement is reached, the requirement to contact the other state each six months shall be eliminated as long as the reciprocity agreement is in force. Each reciprocity agreement shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies."

SECTION 2. This act is effective when it becomes law.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **GOODWIN** (Chair) for the Committee on **JUDICIARY III.**

☐ Committee Substitute for
H.B. 985 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO HAS A VALID CONCEALED HANDGUN PERMIT FROM ANOTHER STATE MAY CARRY A CONCEALED HANDGUN IN COMPLIANCE WITH STATE LAW IN NORTH CAROLINA AND TO DIRECT THE DEPARTMENT OF JUSTICE TO ENTER RECIPROCITY AGREEMENTS WITH ALL STATES THAT RECOGNIZE NORTH CAROLINA'S HANDGUN PERMIT AS VALID.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to the House committee substitute bill, ☐ which changes the title, unfavorable as to the Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☒ **With an indefinite postponement report.**

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

SENATE BILL 1123:
Criminal Unauthorized Recordings.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Sen. Reeves
Date:	September 4, 2002	**Summary by:**	Dianna Jessup
Version:	S1123-CSRK-22		Committee Counsel

SUMMARY: ***This bill would clarify the statutory provisions that prohibit the transfer of a copyrighted work to another medium, the recording of a live performance, and the manufacture and distribution of unlawfully transferred recordings. The penalty provisions would be amended to reduce the number of unlawful articles involved to categorize the offense as a felony. The act would be effective December 1, 2002, and would apply to offenses committed on or after that date.***

The PCS adds language to the long title indicating that this bill was recommended by the Joint Select Committee on Information Technology.

BILL ANALYSIS:

Section 1: The statutory definitions are reorganized, and the term "fixed" is defined, using the definition from federal copyright law.

Section 2: The statutory provisions that prohibit the transfer of sound recordings from one medium to another, and the recording of live performances, are clarified. Subsection (a) provides that it is illegal to transfer sound recordings owned by another from one medium to another with the intent that the copies be sold or used for profit. It also prohibits the manufacture, distribution, wholesale, or transport of such articles. Subsection (b) provides the same protections set forth in Subsection (a) regarding the recordation of live performances.

Section 3: In addition to the actual true name of the manufacturer, the amendment adds the requirement that the actual true name of the author, artist, performer, producer, programmer, or group also appear on the article. Original manufacturers of software or authorized licensees would not be required to disclose contributing authors or programmers. Disclosure of the manufacturer of the packaging, cover, box, jacket or label associated with the article would not be required.

Section 4: A technical change would be made, substituting "Article" for "Chapter."

Section 5: The penalty provision would be rewritten to reduce the number of "articles" involved to qualify the offense as a Class I felony. The term "article" includes both sound recordings and audio visual works, which is the current law. The amendment would clarify, for example, that it is not the number of individual recordings on a compact disc (the tangible medium) that are counted to determine the classification of the offense; it is the number of compact discs (the "articles" to be counted).

Section 6: The act is effective December 1, 2002, and applies to offenses committed on or after that date.

CURRENT LAW: Federal copyright law preempts State law with regard to prosecutions of persons who transfer copyrighted works from one fixed medium to another. However, federal law provides one exception: a State may prosecute persons who unlawfully transfer sound recordings that were originally fixed prior to February 15, 1972. General Statute 14-433(b) codifies the federal preemption provision into State law. Regardless of the date when a sound recording was fixed, the State may prosecute a person for selling the recording if the person has not put the true name of the manufacturer on the product. The federal courts have held that these types of statutes (e.g., G.S. 14-435) have a consumer protection function, and therefore do not protect rights that are merely "equivalent" to those rights protected by federal copyright law.

H. Alan Pell substantially contributed to this summary.

S1123-SMSW-001

May 23, 2002

The fifth and final meeting of the Committee for the 2002 interim was held on May 23, 2002. The Committee reviewed and approved its report, including legislative proposals for introduction in the 2002 Regular Session.

SUMMARY OF RECOMMENDATIONS

The Committee recommends the following Legislative Proposals for consideration in the 2002 Regular Session:

LEGISLATIVE PROPOSAL I – A BILL TO BE ENTITLED AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS FOR CITIES AND TOWNS.

LEGISLATIVE PROPOSAL II - A BILL TO BE ENTITLED AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

LEGISLATIVE PROPOSAL III - A BILL TO BE ENTITLED AN ACT MAKING IT A MISDEMEANOR TO SEND CERTAIN UNSOLICITED ELECTRONIC MAIL TRANSMISSIONS.

LEGISLATIVE PROPOSAL IV - A BILL TO BE ENTITLED AN ACT TO ENACT THE INTERNET POLICY PRIVACY ACT.

LEGISLATIVE PROPOSAL V - A BILL TO BE ENTITLED AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

Brenda Carter
Staff Counsel

SUMMARY OF RECOMMENDED LEGISLATION

LEGISLATIVE PROPOSAL I

BILL DRAFT 2001-LR-116: A BILL TO BE ENTITLED AN ACT AMENDING THE LOCAL GOVERNMENT PURCHASING LAWS UNDER THE LAWS RELATING TO PUBLIC CONTRACTS FOR CITIES AND TOWNS

At the request of local government representatives, the Committee recommends two changes in local purchasing authority to provide more options and flexibility for taking advantage of advances in electronic transactions and expanding their opportunities in E-government. The recommended changes are expected to benefit local governments by lowering the cost of suitable purchases, enhancing bidding/purchasing competition, and making the purchasing process more efficient.

Legislative Proposal I would authorize local governments to conduct reverse auctions for the purchase of goods in the formal bid range. "Reverse auction" is defined as a real-time purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive environment. While not every product or service is a good candidate for purchase through a reverse auction, experiences in other states and in the private sector reportedly indicate that savings in the 10% to 30% range are not unusual in an appropriate reverse auction procurement. According to information presented to the Committee, reverse auctions are authorized in at least 15 other states – including Georgia, Pennsylvania, South Carolina, and Virginia.

Legislative Proposal I would also authorize local governments to use electronic bidding, defined as submitting and accepting sealed bids by use of electronic means. While the advertising (print or electronic) and other requirements for formal bids would remain the same, remaining requirements relating to formal and competitive bids, including seal and signature, would be satisfied when a procurement or a contract is entered into in compliance with electronic bidding requirements. Legislative authorization is necessary to change the current requirements of physical bid openings, and to make clear that electronic sealed bids may be accepted provided that they are designed to provide at least the same level of security, authenticity, and confidentiality as sealed paper bids. This would be an optional alternative or supplement to the current bidding method. The electronic submission and acceptance of formal bids is expected to result in greater competition as well as increased efficiency for both bidders and local governments. According to information presented to the Committee, at least six other states – including Georgia and Kentucky, currently authorize the acceptance of electronic bids.

The statutory changes simply give local governments the option of using reverse auctions and electronic bids; the decision about whether to use these options would be made at the local level.

LEGISLATIVE PROPOSAL II

BILL DRAFT 2001-LR-117: A BILL TO BE ENTITLED AN ACT MAKING IT A FELONY TO ACCESS A GOVERNMENT COMPUTER FOR FRAUDULENT OR RELATED ACTIVITY OR TO CAUSE A DENIAL OF SERVICE AFFECTING A GOVERNMENT COMPUTER.

Security of all data stored by or on behalf of State agencies is a high priority, and State government must be responsive and effective in addressing breaches of its information technology systems. The Committee recommends that penalties be increased for persons who unlawfully access government computers.

Under G.S. 14-454, it is unlawful to willfully, access or cause to be accessed any computer, computer program, computer system, computer network, or any part thereof. If the unlawful act is done for the purpose of devising or executing any scheme or artifice to defraud, or to obtain property or services by means of false or fraudulent pretenses, representations or promises, the violation is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars ($1,000), or if the property or services obtained are worth more than one thousand dollars ($1,000). Any other violation, including those involving educational testing material, a false educational testing score, or a false academic or vocational grade, is a Class 1 misdemeanor. For purposes of the statute, the phrase "access or cause to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network.

Legislative Proposal II establishes makes a distinction between government computers and others, by establishing a parallel provision making it unlawful to access government computers. Penalties for criminal conduct involving a government computer would be increased. If the unlawful act is done for the purpose of devising or executing any scheme or artifice to defraud, or to obtain property or services by means of false or fraudulent pretenses, representations or promises, the violation would be a Class E felony regardless of the value of the property or services obtained. Any other violation, except for those involving educational testing material, a false educational testing score, or a false academic or vocational grade, would be a Class G felony. The Class 1 misdemeanor is retained for violations involving educational testing material, a false educational testing score, or a false academic or vocational grade.

Legislative Proposal II also amends G.S. 14-455 to provide increased penalties for altering, damaging, or destroying a government computer. Under current law, a violation is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars ($1,000). Any other violation is a Class 1 misdemeanor. Under Legislative Proposal II, any violation involving a government computer would be a Class G felony.

Finally, Legislative Proposal II adds a new provision to provide that any person who willfully and without authorization denies or causes the denial of computer, computer program, computer system, or computer network services to an authorized user of the computer, computer program, computer system, or computer network services is guilty of a Class G felony. (Under existing law, the offense is a Class 1 misdemeanor for non-government computers.)

LEGISLATIVE PROPOSAL III

BILL DRAFT 2001-LR-118: A BILL TO BE ENTITLED AN ACT MAKING IT A MISDEMEANOR TO SEND CERTAIN UNSOLICITED ELECTRONIC MAIL TRANSMISSIONS.

The practice of sending mass unsolicited e-mails, known as "spamming", continues to be a matter of concern for Internet Service Providers and their subscribers. Spamming generally involves: (1) any form of advertising, such as commercial advertising; (2) informational announcements to people who do not request them; (3) harassing e-mails, whether through language, frequency, amount, or size; (4) chain letters; (5) malicious e-mail such as "mail bombing"; (6) e-mail containing forged or false information, including the mail-sender and routing information, and subject header.

Legislative Proposal III would make the State's computer trespass law applicable to all unsolicited electronic mail. Under the State's computer trespass law as set out in G.S. 14-458, it is unlawful to falsely identify or forge commercial electronic mail transmission information or other routing information in connection with the transmission of unsolicited bulk commercial electronic mail; this bill adds an identical provision applicable to noncommercial spamming. In the context of the State's laws governing computer-related crime, "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person. "Unsolicited" means not addressed to a recipient with whom the initiator has an existing business or personal relationship and not sent at the request of, or with the express consent of, the recipient.

Violation of the computer trespass law is a Class 3 misdemeanor. If the violation causes damage to the property of another and the damage is valued at less than two thousand five hundred dollars ($2,500), the offense is a Class 1 misdemeanor; if the damage is valued at two thousand five hundred dollars ($2,500) or more the offense is a Class I felony. In addition, any person whose property or person is injured by reason of a violation of G.S. 14-458 may sue for and recover any damages sustained and the costs of the suit.

LEGISLATIVE PROPOSAL IV

BILL DRAFT 2001-LR-121: A BILL TO BE ENTITLED AN ACT TO ENACT THE INTERNET PRIVACY POLICY ACT.

Internet privacy issues have a high profile in the media and in the minds of citizens, and create complex and difficult questions regarding confidentiality, security, freedom of information and speech, consumer protection, interstate commerce, and industry and economic concerns, among others. As a starting point, the Committee has focused on clarifying State government's own policies toward privacy.

Legislative Proposal IV requires State agencies to adopt a privacy policy and requires notice before agencies may collect or disclose personal information concerning users. The Office of Information Technology Services (ITS) is directed to develop a model On-line sample privacy notice, and to make it available to every State agency. The sample may also be made available to other public or private entities.

Legislative Proposal IV provides that any State agency that provides an interactive computer service may not collect or disclose personal information concerning a user unless the user expressly states that her or she has received notice of the agency's Internet privacy policy and has consented to the collection or disclosure. As used in the proposed legislation, "disclosure" means to make personal information known, including by sale or rental of the information. The exception is that a State agency may disclose personal information when necessary in the ordinary course of business as defined in applicable State law, when the disclosure is made pursuant to a court order or by law, when the disclosure is made for the purpose of validating the identity of the user, or if the information or data is used solely for statistical purposes in aggregate form.

LEGISLATIVE PROPOSAL V

BILL DRAFT 2001-LR-124: A BILL TO BE ENTITLED AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS

Legislative Proposal V amends the North Carolina music and video piracy laws. "Piracy" generally refers to the illegal duplication and distribution of sound and video recordings. According to the Recording Industry Association of America (RIAA), there are four specific categories of music piracy:

- **Pirate recordings** are the unauthorized duplication of only the sound of legitimate recordings, as opposed to all the packaging, i.e. the original art, label, title, sequencing, combination of titles etc. This includes mixed tapes and compilation CDs featuring one or more artists.
- **Counterfeit recordings** are unauthorized recordings of the prerecorded sound as well as the unauthorized duplication of original artwork, label, trademark and packaging.
- **Bootleg recordings** (or underground recordings) are the unauthorized recordings of live concerts, or musical broadcasts on radio or television.
- **Online piracy** is the unauthorized uploading of a copyrighted sound recording and making it available to the public, or downloading a sound recording from an Internet site, even if the recording isn't resold. Online piracy may now also include certain uses of "streaming" technologies from the Internet.

North Carolina law prohibits the recording of live concerts or recorded sounds and the distribution of such recordings unlawful in certain circumstances, and also prohibits the retailing of those recordings. G.S. 14-437 currently makes violations a Class I felony subject to a fine of up to $150,000 if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized video recordings during any 180-day period. Music/video piracy is a Class 1 misdemeanor if the offense involves more than 100 but less than 1,000 sound recordings or more than 10 but less than 100 unauthorized video recordings during any 180-day period; any other violation is a Class 2 misdemeanor.

Legislative Proposal I would drop the felony threshold from 1,000 to 100 unauthorized sound recordings. It would also eliminate the Class 2 misdemeanor, and make any offense involving less than 100 unauthorized sound recordings or video recordings a Class 1 misdemeanor.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 1123

Judiciary I Committee Substitute Adopted 8/27/02

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

May 29, 2002

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~ The following definitions apply in this Article:

(1) An "article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images or both can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or

both, that are being transmitted, is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any such article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~,G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting therefrom, including actual, compensatory and incidental damages."

SECTION 5. G. S. 14-437(a) reads as rewritten:

"(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony, with a maximum fine of one hundred fifty thousand dollars ($150,000), if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a second or subsequent conviction for an act in violation of this Article.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1123

Judiciary I Committee Substitute Adopted 8/27/02

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1123-CSRK-22 [v.1]

9/4/2002 9:41:02 AM

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

May 29, 2002

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) An "article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images or both can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its

embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any such article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from

the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434,~~G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting therefrom, including actual, compensatory and incidental damages."

SECTION 5. G. S. 14-437(a) reads as rewritten:

"(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony, with a maximum fine of one hundred fifty thousand dollars ($150,000), if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a second or subsequent conviction for an act in violation of this Article.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **GOODWIN** (Chair) for the Committee on **JUDICIARY III.**

☒ Committee Substitute for
S.B. 1123 A BILL TO BE ENTITLED AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ **With a favorable report as to the House committee substitute bill, ☒ which changes the title, unfavorable as to the Senate committee substitute bill.**

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill is placed on the Calendar of _____.

____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on _____.

____ The bill/resolution is re-referred to the Committee on _____.

____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.

____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV____ ____).

____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV ____ ____.) ( ) This amendment changes the title.

____ The bill/resolution (, as amended,) passes its second reading (by following vote, ____ ____ RC) (, by EV ____ ____,) and (remains on the Calendar,) (and there being no objection is read a third time).

____ The bill/resolution (, as amended,) passes its third reading (by the following vote, ____ ____ RC) (, by EV ____ ____,) and is ordered
____ sent to the Senate.
____ without engrossment. ____ by Special message.
____ sent to the Senate for concurrence in
_____ the House amendment (s).
_____the House committee substitute bill.
____ enrolled.

____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, ____ ____ RC) (, by EV ____ ____,) and the bill is ordered enrolled.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1123

Judiciary I Committee Substitute Adopted 8/27/02

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1123-PCS8784-RK-22

Short Title: Criminal Unauthorized Recordings. (Public)

Sponsors:

Referred to:

May 29, 2002

A BILL TO BE ENTITLED

AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND VIDEO RECORDINGS AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-432 reads as rewritten:

"**§ 14-432. Definitions.**

~~As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.~~The following definitions apply in this Article:

(1) An "article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its

embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.

(3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

SECTION 2. G.S. 14-433 reads as rewritten:

"**§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

(a1) It shall be unlawful for any person to:

~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live ~~concert,~~ performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,~~owner.

~~(4)~~(2) Manufacture, distribute, transport or wholesale any such article for profit, or possess for such purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section.~~are so transferred, without consent of the owner.~~

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from

the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes."

SECTION 3. G.S. 14-435 reads as rewritten:

"**§ 14-435. Recorded devices to show true name and address of manufacturer.**

~~Ninety days after January 1, 1975, every article knowingly sold or transferred or possessed for the purpose of sale, advertising or offering for sale or resale, renting or transporting or causing to be rented or transported by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself.~~

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself."

SECTION 4. G.S. 14-436 reads as rewritten:

"**§ 14-436. Recorded devices; civil action for damages.**

Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434,~~G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting therefrom, including actual, compensatory and incidental damages."

SECTION 5. G. S. 14-437(a) reads as rewritten:

"(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony, with a maximum fine of one hundred fifty thousand dollars ($150,000), if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a second or subsequent conviction for an act in violation of this Article.

~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars ($150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180-day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~

~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180□day period;~~

~~(3) A Class 2 misdemeanor, for any other violation of these sections.~~"

SECTION 6. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.