2001

HOUSE
JUDICIARY I

MINUTES

House Judiciary I

Representative Joe Hackney
Chairman

Representative Dan Blue, Vice Chairman
Representative Martin Nesbitt, Vice Chairman

2001 Session

Emily Reynolds Freeman
Clerk

House Judiciary I

2001 Session

Staff

Susan Sitze, Committee Counsel
Frank Folger, Committee Counsel
Rick Zechini, Committee Counsel

Emily Reynolds Freeman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY I COMMITTEE
2001 – 2002 SESSION



Rep. Hackney
Chair



Rep. Blue
Vice-Chair



Rep. Nesbitt
Vice-Chair



Rep. Alexander



Rep. Arnold



Rep. Blust



Rep. Boyd-McIntyre



Rep. Clary



Rep. Gray



Rep. Insko



Rep. Redwine



Rep. Sutton



Rep. Thompson



Rep. Walker

HOUSE JUDICIARY I COMMITTEE
1999-2000 SESSION

MEMBERSHIP

NAME	OFFICE	TELEPHONE	LEGISLATIVE ASSISTANT
REPRESENTATIVE JOE HACKNEY, CHAIRMAN	2207	733-5752	EMILY REYNOLDS FREEMAN
REPRESENTATIVE DAN BLUE, VICE CHAIRMAN	1227	715-2528	LIN THREAT
REPRESENTATIVE MARTIN NESBITT, VICE CHAIRMAN	420	715-3001	JAN LEE
REPRESENTATIVE MARTHA ALEXANDER	2208	733-5807	ANN FAUST
REPRESENTATIVE GENE ARNOLD	604	733-5802	MARY HAYES
REPRESENTATIVE JOHN BLUST	1420	733-7208	BETTY CHILDRESS
REPRESENTATIVE FLOSSIE BOYD-MCINTYRE	507	733-5905	MIA BAILEY
REPRESENTATIVE DEBBIE CLARY	1211	733-5654	ELENA ASKEY
REPRESENTATIVE LYONS GRAY	533	733-5820	CINDY BROOKS
REPRESENTATIVE VERLA INSKO	2121	733-7208	LINDA MCCRODDEN
REPRESENTATIVE DAVID REDWINE	635	733-5829	NANCY BRANTLEY
REPRESENTATIVE RONNIE SUTTON	1321	715-0875	JUANITA COLEY
REPRESENTATIVE GREGG THOMPSON	1002	733-5828	EDNA SYKES
REPRESENTATIVE TRACY WALKER	1111	733-5935	BARBARA POWELL

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	2/27	3/1	3/6	3/13	3/15	3/20	3/22	3/27	3/29	4/3	4/5	4/10	4/12	4/17 AM	4/17 PM
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Blue, Vice-Chairman	✓			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Representative Nesbitt, Vice-Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓
Representative Alexander	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Arnold	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Representative Blust	✓	✓	✓	✓		✓	✓			✓	✓	✓	✓	✓	✓
Representative Boyd-McIntyre															
Representative Clary						✓		✓	✓	✓	✓		✓	✓	
Representative Gray													✓	✓	✓
Representative Insko	✓	✓		✓	✓	✓	✓	✓	✓			✓	✓	✓	✓
Representative Redwine	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓
Representative Sutton	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓
Representative Thompson	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	
Representative Walker	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-officio						✓							✓		
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio															

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	AM 4/18	PM 4/18	AM 4/19	PM 4/19	AM 4/24	PM 4/24	AM 4/25	PM 5/1	5/3	5/8	5/10	5/15	5/17	5/22	5/24
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Representative Blue, Vice-Chairman	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓
Representative Nesbitt, Vice-Chairmant	✓	✓	✓		✓	✓	✓	✓						✓	
Representative Alexander		✓	✓		✓	✓	✓	✓		✓	✓	✓	✓		✓
Representative Arnold	✓	✓	✓		✓	✓		✓	✓	✓		✓		✓	
Representative Blust	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Boyd-McIntyre	✓		✓												
Representative Clary		✓	✓		✓					✓	✓				
Representative Gray	✓	✓	✓	✓	✓	✓	✓							✓	
Representative Insko	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓				✓
Representative Redwine	✓		✓	✓	✓	✓	✓								
Representative Sutton	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Thompson			✓	✓		✓		✓			✓				
Representative Walker	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-officio			✓												
Representative Dedmon, Ex-officio															
Representative Earle, Ex-officio			✓												

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	5/31	6/19	6/21	7/3	7/10	7/17	7/19	7/24	7/31	8/7					
Representative Hackney, Chairman	✓		✓	✓	✓	✓	✓		✓	✓					
Representative Blue, Vice-Chairman	✓	✓	✓	✓		✓	✓			✓					
Representative Nesbitt, Vice-Chairmant			✓	✓	✓	✓		✓	✓	✓					
Representative Alexander			✓	✓	✓	✓	✓	✓	✓	✓					
Representative Arnold	✓	✓	✓	✓	✓	✓		✓	✓	✓					
Representative Blust	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓					
Representative Boyd-McIntyre				✓		✓	✓			✓					
Representative Clary	✓		✓	✓	✓	✓	✓	✓	✓	✓					
Representative Gray						✓		✓	✓						
Representative Insko			✓			✓		✓	✓	✓					
Representative Redwine	✓			✓		✓			✓						
Representative Sutton	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓					
Representative Thompson						✓									
Representative Walker		✓	✓	✓	✓	✓	✓	✓	✓	✓					
Representative Baddour, Ex-officio															
Representative Cunningham, Ex-officio				✓											
Representative Dedmon, Ex-officio					✓	✓			✓	✓					
Representative Earle, Ex-officio			✓												

2001-2002 Biennium

Leg. Day: H-179/S-173

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0140=	Sutton	RACIAL JUSTICE ACT.	*H	Re-ref Com On Appropriations	02-15-01	04-24-01
H0141=	Sutton	NO DEATH PENALTY/ MENTALLY RETARDED.	H	Ref To Com On Judiciary I	02-15-01	
H0142=	Sutton	AMEND MARRIAGE STATUTES.	*HR	Ch. SL 2001-62	02-15-01	03-26-01
H0183	Redwine	MARRIAGE BY DISTRICT COURT JUDGE.	*HR	Ch. SL 2001-14	02-21-01	03-05-01
H0183	Redwine	MARRIAGE BY DISTRICT COURT JUDGE.	*HR	Ch. SL 2001-14	03-12-01	03-19-01
H0196	Morgan	BID LAW FLEX./ PINEHURST/ELIZABETH CITY.	*HR	Ch. SL 2001-66	02-21-01	03-22-01
H0218=	Hill	INJURY TO COMMODITIES OR PRODUCTION SYSTEMS.	*HR	Ch. SL 2001-290	04-19-01	04-25-01
H0320=	Weiss	SAFE STORAGE OF FIREARMS.	*HF	Failed 2nd Reading	02-28-01	04-23-01
H0342	Redwine	ESC RECORDS/EVIDENCE	HR	Ch. SL 2001-115	03-01-01	03-13-01
H0343	Redwine	REMOVE EMPLOYMENT SECURITY SUNSETS.	*HR	Ch. SL 2001-251	03-01-01	03-20-01
H0344	Redwine	DOMESTIC EMPLOYER WAGE REPORTS.	*HR	Ch. SL 2001-207	03-01-01	03-13-01
H0383=	Nesbitt	LOCAL GOVERNMENT TORT LIABILITY.	*H	Re-ref Com On Judiciary I	03-01-01	04-25-01
H0383=	Nesbitt	LOCAL GOVERNMENT TORT LIABILITY.	*H	Re-ref Com On Judiciary I	04-26-01	
H0451=	Rogers	AMEND NC EMERGENCY MANAGEMENT LAWS.	H	Ref To Com On Judiciary I	03-01-01	
H0514	Grady	RECORD CLOSED SESSIONS.	*HF	Failed 2nd Reading	03-07-01	04-23-01
H0526=	Hilton	ABORTION-PARENTAL CONSENT NOTARIZED.	H	Ref To Com On Judiciary I	03-08-01	
H0576	Hackney	ABOLISH ALIEN. AFFECT./CRIM. CONV.-2.	H	Re-ref Com On Judiciary II	03-13-01	04-10-01
H0631	Setzer	AUTOPSY PHOTOS NOT PUBLIC RECORD.	H	Ref To Com On Judiciary I	03-15-01	
H0643	Hackney	TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS.	*HR	Ch. SL 2001-277	03-15-01	04-18-01
$ H0649	**Baker**	**AUTHORIZE EMERGENCY APPROPRIATION.**	**H**	**Re-ref Com On Judiciary I**	**07-17-01**	
H0665=	Hackney	EXTEND LIMITATIONS FOR SOME INTENTIONAL TORTS.	HR	Ch. SL 2001-175	03-19-01	04-03-01
H0666	Crawford, J.	HALIFAX COUNTY AMBULANCE SERVICES.	H	Ref To Com On State and Local Government	04-03-01	04-10-01
H0676	Eddins	VICTIMS' RIGHTS PROVISIONS.	H	Ref To Com On Judiciary I	03-19-01	
H0728	Capps	DISPLAY OF AMERICAN FLAG.	*H	Re-ref Com On Judiciary I	10-29-01	
H0747	Redwine	MAKE ESC SURTAX PERMANENT.	H	Ref To Com On Judiciary I	03-22-01	
H0792	Starnes	COUNTY-WIDE ZONING/ ETJ.	H	Ref To Com On Judiciary I	03-26-01	
H0793	Starnes	INDECENT BEHAVIOR & PHOTOGRAPHY BETWEEN	*H	Ref To Com On Judiciary II	03-26-01	04-25-01

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		MINORS.				
[redacted]794	Starnes	CALDWELL/DISCHARGE OF FIREARMS.	HR	Ch. SL 2001-67	03-26-01	04-03-01
H0798	Eddins	NO PROFIT FROM CRIME.	H	Ref To Com On Judiciary I	03-26-01	
H0819	Goodwin	ROCKINGHAM CHARTER AMENDMENTS.	*HR	Ch. SL 2001-68	03-27-01	04-05-01
H0837	Alexander	CIVIL PENALTY AUTHORITY/PUBLIC HEALTH VIOLATIONS	HR	Ch. SL 2001-120	04-16-01	04-18-01
H0859	Shubert	REPEAT MISD. LARCENY OR SHOPLIFTING IS FELONY.	H	Ref To Com On Judiciary I	03-29-01	
H0884	Hackney	INNOCENCE PROTECTION ACT.	*HR	Ch. SL 2001-282	03-29-01	04-19-01
H0898	Hensley	STATE EMPLOYEE FEDERAL REMEDY RESTORATION ACT.	*HR	Ch. SL 2001-467	03-29-01	04-18-01
H0929	Wainwright	MINNESOTT BEACH ETJ.	HR	Ch. SL 2001-134	03-29-01	04-24-01
H0932=	Insko	ORANGE OPEN BURNING REGULATION.	H	Ref To Com On Judiciary I	03-29-01	
H0941	Insko	COUNTY ANTIDISCRIMINATION ORDINANCES.	*H	Ref To Com On Judiciary II	04-02-01	04-25-01
H0983	Culp	LMT LIABILITY/ LANDOWNER OF WATERSHED PROPERTIES.	HR	Ch. SL 2001-272	04-05-01	04-19-01
H1012=	Morris	PHYSICIAN ASSISTED SUICIDE UNLAWFUL.	H	Ref To Com On Judiciary I	04-09-01	
[redacted]083	Hackney	SECURE CUSTODY OF JUVENILES USING WEAPONS.	*HR	Ch. SL 2001-158	04-11-01	04-18-01
H1084	Hackney	EQUITABLE DISTRIBUTION CLARIFICATION.	*HR	Ch. SL 2001-364	04-11-01	04-17-01
H1085	Hackney	PROBATION REVOCATION TO COURT OF APPEALS.	*H	Ref To Com On Judiciary I	04-11-01	04-17-01
H1094=	Blue	CORRECT TERM OF JUDGESHIP.	H	Re-ref Com On Judiciary I	04-11-01	04-18-01
H1094=	Blue	CORRECT TERM OF JUDGESHIP.	H	Re-ref Com On Judiciary I	04-26-01	
H1097	Ellis	SEX OFFENSES/AMEND PLEA BARGAIN LAWS.	H	Ref To Com On Judiciary I	04-11-01	
$ H1116	**Hackney**	**DEATH PENALTY MORATORIUM.**	***H**	**Re-ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**12-06-01**	
H1127=	Blust	DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE.	H	Ref To Com On Judiciary I	04-12-01	
H1139	Hackney	APPEALS FROM CONTEMPT.	H	Ref To Com On Judiciary I	04-12-01	04-17-01
H1141	Sexton	CARTWAYS.	H	Ref To Com On Judiciary I	04-12-01	

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2001-2002 Biennium

Leg. Day: H-179/S-173

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[redacted]1154	Holliman	CRIME VICTIMS' RIGHTS ACT AMENDMENTS.	*HR	Ch. SL 2001-433	04-12-01	04-25-01
[redacted]177=	Blust	REQUIRE EXPERIENCE FOR DEATH PENALTY CASES.	H	Ref To Com On Judiciary I	04-12-01	
H1183=	Blue	CORRECT TERM OF JUDGESHIP.	H	Ref To Com On Judiciary I	04-12-01	
H1217	Hackney	NOTIFY DWI LIENHOLDERS IMMEDIATELY.	*HR	Ch. SL 2001-362	04-12-01	04-25-01
H1224=	Nesbitt	CONSTRUCTION CONTRACTS/RETAINAGE REFORM.	H	Ref To Com On Judiciary I	04-12-01	
H1225	Nesbitt	OPEN MEETINGS PENDING LITIGATION.	H	Ref To Com On Judiciary I	04-12-01	
H1260	Davis	PARENTAL RIGHTS & CHILD PROTECTION ACT.	H	Ref To Com On Judiciary I	04-12-01	
H1276	Nesbitt	CLOSE INCEST LOOPHOLE TO PROTECT MINORS.	*H	Re-ref Com On Judiciary II	04-12-01	04-19-01
H1293	Blust	DISTRICT COURT DISTRICT 18 JUDGES' RESIDENCY.	H	Ref To Com On Judiciary I	04-12-01	
H1321	Nesbitt	IMMUNITY FOR CITY/ PUBLIC SAFETY OFFICERS.	H	Ref To Com On Judiciary I	04-12-01	
H1351	Harrington	TWO STRIKES--YOU'RE OUT.	H	Ref To Com On Judiciary I	04-12-01	
$ S0109=	**Robert G. Shaw**	**REQUIRE EXPERIENCE FOR DEATH PENALTY CASES.**	***HR**	**Ch. SL 2001-392**	**04-26-01**	**08-07-01**
[redacted]173=	Frank W. Ballanc	NO DEATH PENALTY/ MENTALLY RETARDED.	*HR	Ch. SL 2001-346	04-25-01	07-04-01
S0195	Tony Rand	CRIMINAL RECORD CHECKS FOR NURSES.	*HR	Ch. SL 2001-371	03-20-01	05-07-01
S0262	Tony Rand	EXPUNGE IMPROPER CRIM. CHARGE/IDENTITY FRAUD.	*HR	Ch. SL 2001-108	04-24-01	05-02-01
S0300=	T. LaFontine Odo	AMEND NC EMERGENCY MANAGEMENT LAWS.	*HR	Ch. SL 2001-214	04-25-01	05-16-01
S0310	David W. Hoyle	UNIFORM SECURITIES REGULATION.	*HR	Ch. SL 2001-126	04-25-01	05-07-01
S0336	Fletcher L. Hart	VARIOUS COUNTIES AMBULANCE SERVICE.	*HR	Ch. SL 2001-106	03-20-01	05-07-01
S0390	James Forrester	PHYSICIAN-ASSISTED SUICIDE/EDUCATION & CRIME.	*H	Re-ref Com On Judiciary I	06-04-01	
S0402	Hamilton C. Hort	KEEP ALTERNATE BASE PERIOD.	H	Ref To Com On Judiciary I	04-23-01	
S0470=	David W. Hoyle	AMEND MV DEALER FRANCHISE LAWS.	*HR	Ch. SL 2001-510	04-26-01	08-14-01
S0476	Kay R. Hagan	REALIGNMENT OF VAR. SUP. CT. JUDGE DISTS.	*HR	Ch. SL 2001-333	04-26-01	07-04-01
S0587	Jeanne H. Lucas	DURHAM HIST.PROP./ TAKING OF DEER.	*HR	Ch. SL 2001-382	04-26-01	05-07-01
S0626=	Daniel G. Clodfe	DOMESTIC VIOLENCE FATALITY REVIEW TEAM.	*H	Re-ref Com On Rules, Calendar,	05-02-01	05-16-01

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				and Operations of the House		
S0633=	Daniel G. Clodfe	BUILDING CODE PILOT PROGRAM.	*HR	Ch. SL 2001-372	05-09-01	07-26-01
S0662=	Eleanor Kinnaird	ORANGE OPEN BURNING REGULATION.	H	Ref To Com On Judiciary I	04-17-01	
S0719	Wib Gulley	TTA EMINENT DOMAIN.	*HR	Ch. SL 2001-239	05-15-01	05-22-01
S0719	Wib Gulley	TTA EMINENT DOMAIN.	*HR	Ch. SL 2001-239	05-29-01	06-04-01
S0739	Charles Carter	PSYCH. ASSOC./ CLINICAL SOCIAL WORKER PRIVILEGE.	*HR	Ch. SL 2001-152	04-12-01	05-15-01
S0742=	Brad Miller	LOCAL GOVERNMENT TORT LIABILITY.	*H	Ref To Com On Judiciary I	04-30-01	
S0759	Wib Gulley	RAIL TRANSPORTATION LIABILITY.	*H	Re-ref Com On Judiciary I	04-26-01	05-22-01
S0774	Tony Rand	PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY.	*HR	Ch. SL 2001-473	04-26-01	05-08-01
S0774	Tony Rand	PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY.	*HR	Ch. SL 2001-473	05-17-01	05-29-01
S0819	Tony Rand	CERTAIN PROB. VIOL. TO CT. OF APPEALS.	H	Re-ref to the Com on Judiciary I and, if favorable, to the Com on Rules, Calendar, and Operations of the House	05-09-01	
S0825	Tony Rand	STATE HEALTH PLAN CONTRACT/EXEMPT APA.	*HR	Ch. SL 2001-192	04-25-01	05-02-01
S0910	Tony Rand	FAILURE TO APPEAR FOR MISDEMEANOR CITATION.	H	Re-ref Com On Rules, Calendar, and Operations of the House	04-23-01	05-08-01
S0931	Tony Rand	CAPITAL CASE/JUDGE OVERSEE DISCOVERY.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-26-01	05-08-01
S0936	Allen H. Wellons	SEX OFFENDER REG/ CONFORM W/FEDERAL LAW.	*HR	Ch. SL 2001-373	04-19-01	05-22-01
S0936	Allen H. Wellons	SEX OFFENDER REG/ CONFORM W/FEDERAL LAW.	*HR	Ch. SL 2001-373	06-06-01	07-24-01
S0951	T. LaFontine Odo	PREVENT UNNECESSARY FILING OF BRIEFS.	*HR	Ch. SL 2001-388	04-24-01	07-31-01
S0961	Frank W. Ballanc	DRIVING WHILE LICENSE REVOKED FLEXIBILITY.	*H	Ref To Com On Judiciary I	04-26-01	
S1004	Tony Rand	INTERFERE W/ EMERGENCY COMMUNICATION.	*HR	Ch. SL 2001-148	04-23-01	05-14-01
S1038	David W. Hoyle	PUBLIC RIGHT-OF-WAY DECLARATION.	*HR	Ch. SL 2001-501	04-30-01	10-04-01

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HOUSE JUDICIARY I COMMITTEE
2001 SESSION

INDEX OF LEGISLATION COVERED DURING EACH MEETING

February 27, 2001	House Bill 142	Amend Marriage Statutes
March 1, 2001	House Bill 142	Amend Marriage Statutes
	House Bill 183	Marriage By District Court Judge
March 6, 2001	House Bill 142	Amend Marriage Statutes
March13, 2001	House Bill 342	ESC Records/Evidence
	House Bill 343	Remove Employment Security Sunsets
	House Bill 344	Domestic Employer Wage Reports
March 15, 2001	House Bill 183	Marriage By District Court Judge
	House Bill 343	Remove Employment Security Sunsets
March 20, 2001	House Bill 141	No Death Penalty/Mentally Retarded
	House Bill 343	Remove Employment Security Sunsets
March 22, 2001	House Bill 142	Amend Marriage Statutes
	House Bill 196	Bid Law Flex./Pinehurst Historic Preservation
March 27, 2001	House Bill 383	Local Government Tort Liability
	House Bill 643	Testimonial Privilege for Violence Victims
March 29, 2001	House Bill 514	Record Closed Sessions
April 3, 2001	House Bill 451	Amend NC Emergency Management Laws
	House Bill 665	Extend Limitations for Some Intentional Torts
	House Bill 794	Caldwell/Discharge of Firearms
April 5, 2001	House Bill 320	Safe Storage of Firearms
April 10, 2001	House Bill 576	Abolish Alienation/Affection Criminal Conversation
April 12, 2001	House Bill 140	Racial Justice Act
April 17, 2001 am	House Bill 898	State Employee Federal Remedy Restoration
	House Bill 1084	Equitable Distribution Clarification
	House Bill 1094	Correct Term of Judgeship
April 17, 2001 pm	House Bill 1083	Secure Custody of Juveniles Using Weapons
	House Bill 1085	Probation Revocation to Court of Appeals
	House Bill 1139	Appeals From Contempt
April 18, 2001 am	House Bill 643	Testimonial Privilege for Violence Victims
	House Bill 884	Innocence Protection Act

April 18, 2001 pm	House Bill 837	Civil Penalty Authority/Public Health Violations
	House Bill 884	Innocence Protection Act
	House Bill 941	County Anti-Discrimination Ordinances
	House Bill1217	Notify Driving While Impaired Lienholders Immediately
	House Bill 1276	Close Incest Loophole to Protect Minors
April 19, 2001 am	House Bill 320	Safe Storage of Firearms
April 19, 2001 pm	House Bill 514	Record Closed Sessions
	House Bill 884	Innocence Protection Act
	House Bill 983	LMT Liability/Landowner of Watershed Properties
April 24, 2001 am	House Bill 140	Racial Justice Act
	House Bill 792	County-Wide Zoning/ETJ
	House Bill 793	Indecent Behavior Between Minors
	House Bill 929	Minnesott Beach ETJ
	House Bill 941	County Anti-Discrimination Ordinances
	House Bill 1154	Crime Victims' Rights Act Amendments
April 24, 2001 pm	House Bill 1217	Notify DWI Lienholders Immediately
	House Bill 1224	Construction Contracts/Retainage Reform
	House Bill 1225	Open Meetings Pending Litigation
April 25, 2001	House Bill 218	Injury to Commodities or Production Systems
	House Bill 383	Local Government Tort Liability
	House Bill 793	Indecent Behavior Between Minors
	House Bill 798	No Profit From Crime
May 1, 2001	Senate Bill 173	No Death Penalty/Mentally Retarded
	Senate Bill 262	Expunge Improper Criminal Charge/Identity Fraud
May 3, 2001	Senate Bill 195	Criminal Record Checks for Nurses
	Senate Bill 310	Uniform Securities Regulation
	Senate Bill 336	Various Counties Ambulance Service
	Senate Bill 587	Durham Historic Properties
May 8, 2001	Senate Bill 774	Public Enterprise Customer Billing Privacy
	Senate Bill 910	Failure to Appear for Misdemeanor Citation
	Senate Bill 931	Capital Case/Judge Oversee Discovery
May 10, 2001	Senate Bill 793	Psychological Associates/Clinical Worker Privilege
	Senate Bill 936	Sex Offender Registration/Conform with Federal Law
	Senate Bill 1004	Interfere With Emergency Communication
May 15, 2001	Senate Bill 300	Amend NC Emergency Management Laws
	Senate Bill 626	Domestic Violence Fatality Review Team
May 17, 2001	Senate Bill 759	Rail Transportation Liability

	Senate Bill 936	Sex Offender Registration/Conform with Federal Law
May 22, 2001	Senate Bill 719	TTA Eminent Domain
May 24, 2001	Senate Bill 774	Public Enterprise Customer Billing Privacy
May 31, 2001	Senate Bill 719	TTA Eminent Domain
June 19, 2001	Senate Bill 109	Require Experience For Death Penalty Cases
	Senate Bill 390	Physician-Assisted Suicide/Education & Crime
June 21, 2001	Senate Bill 173	No Death Penalty/Mentally Retarded
July 3, 2001	Senate Bill 173	No Death Penalty/Mentally Retarded
	Senate Bill 476	Greensboro 19 Precinct in Superior Court District 18D
July 10, 2001	Senate Bill 470	Clarify Motor Vehicle Franchise Laws
July 17, 2001	Senate Bill 470	Clarify Motor Vehicle Franchise Laws
July 19, 2001	Senate Bill 936	Sex Offender Registration/Conform with Federal Law
	Senate Bill 951	Prevent Unnecessary Filing of Briefs
July 24, 2001	Senate Bill 633	Building Code Pilot Program
July 31, 2001	Senate Bill 470	Clarify Motor Vehicle Franchise Laws
August 7, 2001	Senate Bill 470	Clarify Motor Vehicle Franchise Laws

Dates Bills Were Considered

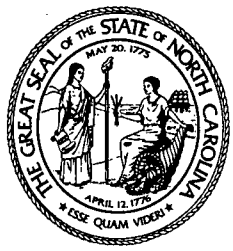
House Bill 140	April 12 and April 24 (pm)
House Bill 141	March 20
House Bill 142	February 27
House Bill 183	March 1 and March 15
House Bill 196	March 22
House Bill 218	April 25
House Bill 320	April 5 and April 19 (am)
House Bill 342	March 13
House Bill 343	March 13 and March 15
House Bill 344	March 13
House Bill 383	March 27 and April 25
House Bill 451	April 3
House Bill 514	March 29 and April 19 (pm)
House Bill 576	April 10
House Bill 643	March 27, April 10 and April 18 (am)
House Bill 665	April 3
House Bill 666	April 10
House Bill 676	April 24 (pm)
House Bill 792	April 24 (am)
House Bill 793	April 24 (am) and April 25
House Bill 794	April 3

Dates Bills Were Considered

House Bill 798	April 25
House Bill 837	April 18 (pm)
House Bill 884	April 18 (am and pm) and April 19 (pm)
House Bill 898	April 17 (am)
House Bill 929	April 24 (am)
House Bill 941	April 18 (pm) and April 24 (am)
House Bill 983	April 19 (pm)
House Bill 1083	April 17 (pm)
House Bill 1084	April 17 (am)
House Bill 1085	April 17 (pm)
House Bill 1094	April 17 (am)
House Bill 1139	April 17 (pm)
House Bill 1154	April 24 (am) and April 24 (pm)
House Bill1217	April 18 (pm) and April 24 (pm)
House Bill 1224	April 24 (pm)
House Bill 1225	April 24 (pm)
House Bill 1276	April 18 (pm)

Dates Bills Were Considered

Senate Bill 109	June 19
Senate Bill 173	May 1, June 21 and July 3
Senate Bill 195	May 3
Senate Bill 262	May 1
Senate Bill 300	May 15
Senate Bill 310	May 3
Senate Bill 336	May 3
Senate Bill 390	June 19
Senate Bill 470	July 10, July 17, July 31 and August 7
Senate Bill 476	July 3
Senate Bill 626	May 15
Senate Bill 633	July 24
Senate Bill 719	May 22 and May 31
Senate Bill 739	May 10
Senate Bill 759	May 17
Senate Bill 774	May 8 and May 24
Senate Bill 910	May 8
Senate Bill 931	May 8
Senate Bill 936	May 10, May 17and July 19
Senate Bill 951	July 19
Senate Bill 1004	May 8 and May 10



House Judiciary I

2001 Session

MINUTES

House Judiciary I Committee

February 27, 2001

Minutes

The first meeting of the House Judiciary I Committee was held on Tuesday, February 27, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order, and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet are attached to the minutes, (Attachments I and II).

Chairman Hackney introduced Ms. Emily Reynolds Freeman, Committee Clerk, and recognized Ms. Susan Sitze, Mr. Frank Folger and Mr. Rick Zechini who would serve as Counsel to the Committee. Each member of the Committee was introduced.

Representative Sutton was recognized to explain House Bill 142, AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE-OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment III). A bill analysis was distributed to the members, (Attachment IV). Representative Sutton stated that the bill was a compromise bill recommended by the LRC Marriage License Laws Committee and noted that this topic had not been visited much over the past 30-40 years.

Representative Sutton offered an amendment, (Attachment V), changing the title to bring it into agreement with the intent of the legislation. He moved adoption of the amendment. The motion carried.

Representative Sutton explained that Section 1 addresses persons who are authorized to solemnize a marriage. He said that currently North Carolina law allows for the solemnization of a marriage only by a magistrate, an ordained minister, or a minister authorized by his church, but that exceptions have been made for the Bahai's and the Society of Friends. Representative Sutton said that this preferential treatment has raised constitutional questions. He further noted that other religious groups want to conduct marriage ceremonies, but have found that they are not recognized as valid in North Carolina.

Representative Blust asked if there is a definition of "religion" in the legislation. Representative Sutton stated that the Commission has decided not to attempt to define specific religions. Chairman Hackney stated that there is case law that addresses religious groups and demonimations.

Representative Arnold asked if the legislation has impact on same-sex marriages. Representative Sutton replied that there would be no change in the same-sex marriage laws and that they are prohibited by statute in North Carolina.

Representative Sutton continued his explanation noting the addition of language on page 1, line 23, "or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe." He offered a second amendment (Attachment VI), which would clarify that the Indian Nation or Tribe must be either a federal or state recognized tribe. The amendment was adopted.

Representative Blue requested that staff work to improve the sentence structure of Section 1.

Representative Sutton explained Section 2 of the bill regarding marriage of underage applicants. He stated that changes are proposed to make the law apply to both male and female applicants. The new language would require the consent of a mother or father of a male or female between the ages of 16-18 who are applying to marry, or the consent by a person, agency, or institution having legal custody.

Chairman Hackney asked by the language "in loco parentis" was removed. Representative Sutton responded that the Commission agreed that the language was removed because many times the young person may be living with older siblings, friends, etc., who may not fit into the category of in loco parentis.

Discussion followed regarding the inclusion of in loco parentis and Representative Sutton stated that he was not opposed to having the language included. Chairman Hackney requested staff to prepare an amendment to be offered at the next meeting.

Representative Blust stated that he felt the legislation would encourage young people to get married to soon. Chairman Hackney noted that the legislation does not make any change to the existing statute with regard to age, but that it makes the law gender-neutral. Representative Sutton stated that the legislation does not encourage marriage, but attempts to regulate it.

Representative Blust asked if statistics were available regarding marriages of young people. Representative Alexander stated that in 1998, there were 114 brides under the age of fifteen.

Representative Alexander offered an amendment to require judicial approval before an applicant between the age of twelve and sixteen years of age may be married, (Attachment VII). She noted that in the statistics she had quoted regarding the 114 marriages of young girls fifteen years of age, or under, sixty-two of the men were four or more years older that the bride. She noted the need for sensitivity with regard to the situation of statutory rape and said that she felt that this amendment would address that potential situation. The amendment would require that a young woman, not living at home, would be required to receive judicial consent to marry. If living at home, parental consent would be required prior to going to court.

Representative Sutton pointed out that there is currently a provision in the law that allows twelve-year-olds who are pregnant or have given birth to marry the father, and that the amendment would tighten existing law.

Mr. John Rustin, North Carolina Family Policy Council, was recognized. He said that he felt that the amendment could encourage children to leave families because the amendment would remove the requirement for parental consent.

Discussion followed regarding the minimum age at which a person may marry.

Mr. Rick Zechini, Committee Counsel, stated that he thought that the intent of the amendment was to limit the age that a person could enter into marriage to twelve years of age. Chairman Hackney stated that if that was the intent, the language should be drafted to state that no one under the age of twelve could marry, so that the law is not ambiguous in any way.\

Representative Arnold requested that staff provide information regarding statutory rape, mental capacity and ages as they relate to school law.

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, FEBRUARY 27, 2001

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 142 – AMEND MARRIAGE STATUTES
REPRESENTATIVE RON SUTTON

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

February 27, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rittenhouse	NCFPC
Matt Osborne	AOC
Susan Schmidt	NC Justice Center
Patrick Yarn	APPCNC / ACLU
[illegible]	ACLU
[illegible]	NC-NW
Molly Wynn	NCCADV
[illegible]	C.D.L.
Bill Campbell	Institute of Government
Lora Mooney Byrd	NC Assoc. Register of Deeds
Judy Evans-Barbee	NC Assoc. Register of Deeds
Paula H. Hopper	Moore Van Allen
Sister Patricia Wilson, SC	Roman Catholic Diocese of Raleigh
Stephanie Manner	NCAR
Dan McCorquodale	SAS.
[illegible]	Moore + Van Allen
Sam Ray/NCBIO	NCBIO

House Judiciary I Committee

February 27, 2001
Minutes

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The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 142*

Short Title:	Amend Marriage Statutes.	(Public)
Sponsors:	Representatives Sutton; Alexander, Barefoot, Bonner, Hackney, Haire, Insko, Lucas, McAllister, Tolson, Wainwright, Weiss, Womble, and Yongue.	
Referred to:	Judiciary I.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE- OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by ~~his~~ a church, or of a magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife, or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, shall be a valid and sufficient ~~marriage:~~ marriage. ~~Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this~~

~~Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. G.S. 51-2 reads as rewritten:

"**§ 51-2. Capacity to marry.**

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

~~(3)~~ (1) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry; or

~~(4)~~ (2) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of such male or female child applying to marry.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) When an unmarried female who is 14 or 15 years of age is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or an unmarried male who is 14 or 15 years of age is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, and consent in writing to the marriage, as set out in subsection (a), subdivisions (1) and (2) above, is given on the part of the underage male or female applying to marry, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.

(c) When an unmarried female who is ~~more than 12 years old, but~~ less than ~~18~~ 14 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an unmarried male who is less than 14 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, ~~and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2), (3) or (4) above, or by the director of social services of the county of residence of either party, is given on the part of the female,~~ the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance

with the provisions of this ~~Chapter.~~ Chapter, only if a district or family court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

~~(c)~~(d) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

SECTION 3. G.S. 51-6 reads as rewritten:

"**§ 51-6. Solemnization without license unlawful.**

No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, shall perform a ceremony of marriage between a man and woman, or shall declare them to be husband and wife, until there is delivered to ~~him~~ that person a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage ~~is intended to take place~~ license was issued or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage ceremony.

Whenever a man and woman have been lawfully married in accordance with the laws of the state in which the marriage ceremony took place, and said marriage was performed by a ~~justice of the peace~~ magistrate or some other civil official duly authorized to perform such ceremony, and the parties thereafter wish to confirm their marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in a ceremony recognized by any religious denomination, Indian Nation or Tribe, nothing herein shall be deemed to prohibit such confirmation ceremony; provided, however, that such confirmation ceremony shall not be deemed in law to be a marriage ceremony, such confirmation ceremony shall in no way affect the validity or invalidity of the prior marriage ceremony performed by ~~a~~ civil official, no license for such confirmation ceremony shall be issued by a register of deeds, and no record of such confirmation ceremony may be kept by a register of deeds."

SECTION 4. G.S. 51-7 reads as rewritten:

"**§ 51-7. Penalty for solemnizing without license.**

Every ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, who marries any couple without a license being first delivered to ~~him,~~ that person, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within 10 days after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars ($200.00) to any person who sues therefore, and ~~he~~ shall also be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons ~~if it appears that such persons~~ who are able to answer the

questions regarding age, marital status, and intention to marry, and, based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

SECTION 6. Chapter 51 of the General Statutes is amended by adding the following new section:

"**§ 51-8.2. Issuance of marriage license when applicant is unable to appear.**

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds' office, the applicant may submit a sworn and notarized affidavit in lieu of personal appearance.

The affidavit shall be in the following or some equivalent form:

_____, (Applicant) appearing before the undersigned notary and being duly sworn, says that:

1. I, _____, [applicant's name] am applying for a license in _____ County, NC to marry _____ [name of other applicant] in North Carolina within the next 60 days and I am authorized under G.S. 51-8.2 to complete this Affidavit in Lieu of Personal Appearance for Marriage License Application.

   I attach: (1) documentation that I am over 18 years of age as required in county of marriage; and (2) documentation of divorce as required by county of marriage.

2. I submit the following information in applying for a marriage license:

   Name: _____

   First Middle Last

   Residence: _____

   State County City or Town

   _____

   Street and Number Inside City Limits (Yes or No)

Birthplace: _____ Birth Date _____ Age: _____
County & State or Country
Father: _____
Name State of Birth Address (if living) or Deceased
Mother: _____
Name State of Birth Address (if living) or Deceased
Race (Optional): _____ Number of this marriage:
1st, 2nd, etc.
Last Marriage Ended by: _____ Date Marriage Ended:
Death, Divorce, Annulment
Specify Highest Grade Completed in School (Optional):
Social Security # _____ (If applicant does not have Social Security number, attach affidavit of ineligibility)

I hereby make application to the Register of Deeds for a Marriage License and solemnly swear that all of the statements contained in the above application are true and I further make oath that there is no legal impediment to such marriage. _____
Signature of Applicant
Sworn to (or affirmed) and subscribed before me
this _____ day of _____, _____.

_____
[Seal] Notary Public

My commission expires: _____
_____
[Notary's typed or printed name]"

SECTION 7. G.S. 51-15 reads as rewritten:

"**§ 51-15. Obtaining license by false representation misdemeanor.**

If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class ~~3~~1 misdemeanor. "

Section 8. G.S. 51-16 reads as rewritten:

"**§ 51-16. Form of license.**

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by ~~his~~ a church, ~~or to~~ any ~~magistrate for _____ County:~~ magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged _____ years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If

either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county.~~State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this _____ day of_____, _____

_____ L.M.

Register of Deeds of _____ County

Every register of deeds ~~shall~~ shall, at the request of an applicant, designate in ~~every~~ a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white,"~~"colored, or "Indian,"~~ "black,""African American,""American Indian,""Alaska Native,""Asian Indian,""Chinese,""Filipino,""Japanese,""Korean,""Vietnamese,""Other Asian,""Native Hawaiian,""Guamarian,""Chamorro,""Samoan,""Other Pacific Islander,""Mexican,""Mexican American,""Chicano,""Puerto Rican,""Cuban,""Other Spanish/Hispanic/Latino,"or"other,"as the case may be. The certificate shall be filled up and signed by the ~~minister or officer~~ minister, officer, or other authorized individual celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the _____ day of _____, _____, at the house of P.R., in (here name the town, if any, the township and county), according to law.

_____N.O.

Witness present at the marriage:

S.T., of (here give residence)."

SECTION 9. G.S. 51-18.1 reads as rewritten:

"**§ 51-18.1. Correction of errors ~~in names~~ in application or license; amendment of names in application or license.**

(a) When it shall appear to the register of deeds of any county in this State that ~~the names of either or both parties to a marriage~~ information is incorrectly stated on an application for a marriage license, or upon a marriage license issued thereunder, or upon a return or certificate of an officiating officer, the register of deeds is authorized to correct such record or records ~~to show the true name and names of the parties to the marriage~~ upon being furnished with an affidavit signed by one or both of the applicants for the marriage license, accompanied by affidavits of at least two other persons who know the ~~true name or names of the person or persons seeking such correction.~~ correct information.

(b) When the name of a party to a marriage has been changed by court order as a result of a legitimation action or other cause of action, and the party whose name is changed ~~present~~ presents a signed affidavit to the register of deeds indicating the name change and requesting that the application for a marriage license, the marriage license, and the marriage certificate of the officiating officer be amended by substituting the changed name for the original name, the register of deeds may amend the records as requested by the party, provided the other party named in the records consents to the amendment."

SECTION 10. This act is effective when it becomes law.

HOUSE BILL 142:
Amend Marriage Statutes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Sutton
Date:	February 27, 2001	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 142 broadens the list of persons authorized to solemnize a marriage, changes consent requirements for underage applicants, limits the responsibilities of registers of deeds in issuing licenses, provides a procedure by which applicants who are unable to appear at the register of deeds' office may apply for a license, increases the penalty for obtaining a license by misrepresentation, expands the geographical scope of a marriage license, makes inclusion of race on the license optional, and provides for the correction of errors on a marriage license or application.***

What follows is a summary of the sections of the bill:

1. **Persons authorized to solemnize a marriage.** Currently the law in North Carolina allows for solemnization of a marriage only by a magistrate, an ordained minister, or a minister authorized by his church. While there are specific exceptions carved out for the Bahai's and the Society of Friends, there are several religious groups whose marriage ceremonies are not recognized as valid in North Carolina. This preferential treatment for certain religious groups has raised constitutional questions. This section amends G.S. 51-1 by expanding the list of persons authorized to solemnize a marriage to be inclusive of all religious groups, and eliminates specific exemptions for the Bahai's and the Society of Friends. The new language closely follows the language recommended by the Uniform Marriage and Divorce Act.

2. **Marriage of underage applicants.** Currently the law in North Carolina allows an individual who is between the ages of 16 and 18 to apply for a marriage license with parental consent. A female applicant between the ages of 12 and 16 may marry with the same type of consent only if the female applicant is pregnant or has given birth and intends to marry the father of the child. The statute is silent as to male applicants between the ages of 12 and 16. This section of the bill amends G.S. 51-2 to clarify who is authorized to consent to the marriage of an applicant between the ages of 16 and 18. It requires the same type of consent for applicants who are 14 or 15 years of age when the female applicant is pregnant or has given birth, but requires judicial consent in cases where the applicant is under the age of 14 and the female applicant is pregnant or has given birth. This section also makes clear that the provisions apply to both male and female applicants.

3. **Conforming changes.** This section makes conforming changes to G.S. 51-6.

4. **Conforming changes.** This section makes conforming changes to G.S. 51-7.

5. **Responsibilities of Registers of Deeds.** The current statute is vague as to what exactly the Register of Deeds' responsibilities are in issuing a license. However, over the years the burden of determining whether an applicant for a marriage license is mentally competent has fallen to the Register of Deeds who issues the license. This section of the bill amends G.S. 51-8 to specifically require that a Register of Deeds only be responsible for verifying objective requirements before issuing a license.

6. **Issuance of license when applicant is unable to appear.** Currently both applicants for a marriage license are required to appear in person at the Register of Deeds' office. The statutes do not address situations where an applicant is unable to appear. This section of the bill creates a procedure by

which an individual who is unable to appear in person at the Register of Deeds' office may apply for a marriage license by submitting a sworn and notarized affidavit in lieu of personal appearance.

7. **Penalty for aiding and abetting in obtaining license by misrepresentation.** Under the current law, a person who obtains a marriage license by misrepresentation or false pretenses is guilty of a Class 3 misdemeanor. This section makes aiding and abetting in obtaining a license by misrepresentation or false pretenses an equally punishable offense and raises it from a Class 3 misdemeanor to a Class 1 misdemeanor.

8. **Geographical scope of a marriage license**. Under the current law, a marriage license is only valid in the county in which it is issued. This section expands the scope of the license so that it is valid in any county in the State as long as it is returned to the Register of Deeds' office in the county in which it was issued.

Designation of race on a marriage license. The current law requires that race be indicated on the marriage license and offers as options either "white", "colored", or "Indian". This section of the bill also amends G.S. 51-16 by making the designation of race on a marriage license optional, and by updating and expanding the options an applicant has to choose from to be inclusive of all races. The options listed are the same options listed on the 2000 U.S. Census form.

9. **Correction of errors.** The current statute allows for corrections of errors in the names of the parties on an application or marriage license through submission of affidavits containing the correct information. This section amends G.S. 51-18.1 to allow all errors on an application or license to be corrected through the same procedure set out in the statute for the correction of errors in the names.

10. **Effective date.** The act would be effective when it becomes law.

Wendy L. Graf, counsel to the LRC's Committee on Marriage License Laws, contributed to this summary.

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ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 142 DATE 2/27/01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Sutton
Sen.)

moves to amend the bill on page 1, line 3-5

(X) WHICH CHANGES THE TITLE LINE 3

by after the word marriages by deleting the phrase:

and to require that those persons be registered with the

Secretary of State

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 142 DATE 2/27/01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Sutton
Sen.)

1 moves to amend the bill on page 1, line 24
2 ( ) WHICH CHANGES THE TITLE
3 by adding after the word denomination:
4 FederaL OR State recognized
5
6 AND
7
8 page 3, line 23
9 by adding after the word denomination:
10 Federal or State recognized
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-1 [v.2]

Date _____,2001

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

Representative Alexander

moves to amend the bill on page 1, lines 5 and 6, be rewriting those lines to read:
"STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE AN APPLICANT BETWEEN THE AGE OF TWELVE AND SIXTEEN YEARS OF AGE MAY BE MARRIED; TO LIMIT THE";

and on page 2 and 3, line 27 on page 2 through line 4 on page 3, by rewriting those lines to read:

"(b) In all cases where the person applying to marry is more than 12 years old but less than 16 years old a district court or family court must find that the applicant is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the person will be served. When an unmarried female who is more than 12 years old, but less than ~~18~~ 16 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an unmarried male who is more than 12 years old but less than 16 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), ~~(2), (3) or (4)~~ and (2) above, ~~or by the director of social services of the county of residence of either party,~~ is given on the part of ~~the female,~~ any party

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-1 [v.2]

more than 12 year old and less than 16 years old, and upon the findings of a court that any party more than 12 year old and less than 16 years old is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter. If the party applying to marry no longer resides with a parent or guardian, a showing can be made to the district court or family court and the consent requirement will be waived".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

March 1, 2001

Minutes

The House Judiciary I Committee met on Thursday, March 1, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker.

Representative Redwine was recognized to explain House Bill 183, AN ACT TO ALLOW DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES, (Attachment III). Representative Redwine stated that the bill was introduced to allow a marriage ceremony for one of his employees to be performed by a district court judge in his district. An explanation of the bill is attached to the minutes, (Attachment IV).

Chairman Hackney asked if any thought had be given to making the bill effective for only a couple of days. He said that there is generally opposition among the judges to granting this authority to judges. Representative Redwine stated that it had been his intention for the legislation to be very narrow for one specific district court judge in his district and for the authority to expire once the ceremony was performed.

Representative Redwine offered an amendment at the request of Senator Garrou, (Attachment V). Senator Garrou was recognized to explain the amendment. She said that the amendment would add emergency superior court judges to the category of persons who may perform marriages. She said that this was also a request for a one-time authority to perform a marriage ceremony in her district during the Easter weekend.

Representative Sutton noted that granting such requests would open the door for many such requests.

Representative Arnold stated that he thought that a law could not be passed for one individual and questioned whether the marriage would be legal if such a law was passed.

Mr. Frank Folger, Committee Counsel, said that anyone could get married by a judge during this timeframe, and that the bill would not be considered to be for one individual.

The question before the committee was the adoption of the Redwine amendment. The amendment was adopted.

Representative Redwine offered a second amendment, (Attachment VI), to limit the limit the effective date of the legislation. The amendment was adopted.

Representative Redwine moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment VII). The committee substitute is attached, (Attachment VIII)

Representative Sutton was recognized to continue discussion of House Bill 142, AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE-OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION. The bill was first discussed during the February 27, 2001 meeting of the committee. Representative Sutton offered a proposed committee substitute and moved that it be adopted for the purpose of discussion, (Attachment IX). The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes found in the committee substitute. Ms. Sitze said that the committee substitute contained the two amendments that were adopted during the February 27, 2001 meeting, and makes technical corrections to the original drafting of the bill. She noted that there was a title change to reflect those amendments.

Representative Sutton stated that at the time of adjournment of the previous meeting, the committee was discussing an amendment that had been offered by Representative Alexander and that she would like to be recognized.

Representative Alexander stated that she would like to withdraw the amendment that had been offered at the previous meeting and offer a substitute amendment, (Attachment X). She said that the amendment addresses and clarifies the concerns that were discussed at the previous meeting insuring that if the party applying to marry no longer resides with that party's parent but resides with an adult relative of the party and if the party has neither a legal custodian nor guardian, a district court judge may enter an order allowing the consent to be given by the adult relative with whom the party resides standing in loco parentis. The amendment also states that it shall be unlawful for any person under 12 years old to marry.

Mr. Rick Zechini, Committee Counsel, said that the amendment extends the judicial consent requirement to all people from 12 to 15 years of age. This age group would be required to get judicial consent and would be required to obtain consent from a parent, a guardian, or one serving as custodian of the child.

Representative Sutton spoke in support of the amendment.

Chairman Hackney called the members' attention to a letter that had been distributed by the Diocese of Raleigh that argued for the age of 14 rather than 12. He noted that this was a public policy decision for the General Assembly, (Attachment XI).

Committee discussion followed.

Mr. Matt Osborne, Administrative Office of the Courts, was recognized for comment. Mr. Osborne stated that the District Court Judges' Legislative Committee has concerns with the judicial approval process and feels that they are not in the best position to make these decisions, particularly if the parent feels that the marriage is appropriate or inappropriate. He said that while the judges were not comfortable with the bill as originally drafted, they would not actively oppose it, but that any expansion of the district court involvement, which this amendment would do, would be opposed.

Ms. Anne Winner, NC NOW, spoke in support of the amendment.

Mr. Chip Killian, Moore and Van Allen and representing the Register of Deeds Association, spoke in support of the amendment with regard to procedural issues. He said that under this amendment, the Registers of Deeds would not be required to make a determination of what is or is not in loco parentis.

Mr. John Rustin, North Carolina Family Policy Council, spoke in opposition to the amendment noting concern for parental rights.

Committee discussion followed and the meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MARCH 1, 2001

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 142 – AMEND MARRIAGE STATUTES
REPRESENTATIVE RON SUTTON

HOUSE BILL 183 – MARRIAGE BY DISTRICT COURT JUDGE
REPRESENTATIVE DAVID REDWINE

ATTACHMENT II

VISITOR REGISTRATION SHEET

Judiciary I
Name of Committee

March 1, 2001
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Jo McCants	AOC
Sister Patricia Wilson, S.C.	Roman Catholic Diocese of Raleigh
Susan Schmidt	NC Justice Center
John [illegible]	NCFPC
Mark H. Creech	CAL
George Reed	NC Council of Churches
Deb Ross	ACLU
Jeanne Kunin	NCSBA
Paula R. Hopper	Moore Van Allen
Jon Killian	"
Judy Evans-Barbee	Halifax Co. Register of Deeds
[illegible]	NCNW
Talmadge Young	APPCNC / ACLU
Paula A. Wolf	Covenant w/ NC's Children

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 183

Short Title: Marriage by District Court Judge. (Public)

Sponsors: Representative Redwine.

Referred to: Judiciary I.

February 21, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, district court judge of this State, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. This act is effective when it becomes law and expires June 15, 2001.

HOUSE BILL 183:
Marriage by District Court Judge

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Redwine
Date:	March 1, 2001	**Summary by:**	Rick Zechini
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 183 amends G.S. 51-1 to allow district court judges of this State to perform marriage ceremonies, effective when the bill becomes law and expiring June 15, 2001.

CURRENT LAW and BILL ANALYSIS: Although North Carolina law provides that magistrates may perform marriage ceremonies, district court judges are not currently authorized to perform marriages. House Bill 183 amends G.S. 51-1 to allow district court judges of this State to perform marriage ceremonies. The bill is effective when it becomes law and expires June 15, 2001.

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 183

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

H183-ASG-2 [v.2]

Date _____,2001

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

Representative

moves to amend the bill on page 1, line 2, by rewriting the line to read:
"AN ACT TO ALLOW DISTRICT COURT JUDGES AND EMERGENCY SUPERIOR COURT JUDGES TO PERFORM MARRIAGE";

and on page 1, line 10, by rewriting that line to read:
"denomination, minister authorized by his church, district court judge of this State, emergency superior court judge of this State, or of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

H. B. No. 183 DATE March 1, 2001

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 19,

by rewriting the lines to read: April 1
"This act becomes effective ~~June 10~~, 2001 and
expires June 15, 2001."

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(s) **HACKNEY** (Chair) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 183 A BILL TO BE ENTITLED AN ACT TO ALLOW DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

☐ 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 (# 1), ☒ 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 183
PROPOSED COMMITTEE SUBSTITUTE H183-PCS3140-SG-1

Short Title: Marriage by District Court Judge. (Public)

Sponsors:

Referred to:

February 21, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURT JUDGES AND EMERGENCY SUPERIOR COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, district court judge of this State, emergency superior court judge of this State, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. This act becomes effective April 1, 2001, and expires June 15, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 142*
PROPOSED COMMITTEE SUBSTITUTE H142-CSSA-1 [v.5]

2/28/2001 5:53:59 PM

Short Title: Amend Marriage Statutes. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE- OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the ~~The~~ consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, ~~and~~ either:

(1) a. in the presence of an ordained minister of any religious denomination, a minister authorized by ~~his~~ a church, or ~~of a magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife,~~ a magistrate; and

b. ~~and~~ with the consequent declaration by ~~such~~ the minister or ~~officer~~ magistrate that ~~such~~ the persons are husband and ~~wife,~~ wife; or

(2) in accordance with any mode of solemnization recognized by any religious denomination, federally or State recognized Indian Nation or Tribe. ~~shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered~~

~~with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. G.S. 51-2 reads as rewritten:

"**§ 51-2. Capacity to marry.**

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

(3) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry; or

(4) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of such male or female child applying to marry.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(a1) When an unmarried female who is 14 or 15 years of age is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or an unmarried male who is 14 or 15 years of age is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, and consent in writing to the marriage, as set out in subsection (a), subdivisions (3) and (4) above, is given on the part of the underage male or female applying to marry, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.

(b) When an unmarried female who is ~~more than 12 years old, but~~ less than ~~18~~ 14 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an unmarried male who is less than 14 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, ~~and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2), (3) or (4) above, or by the director of social services of the county of residence of either party, is given on the part of the female,~~ the register of deeds is authorized to issue to

said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this ~~Chapter.~~ Chapter, only if a district court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(c) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

SECTION 3. G.S. 51-6 reads as rewritten:

"**§ 51-6. Solemnization without license unlawful.**

No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, shall perform a ceremony of marriage between a man and woman, or shall declare them to be husband and wife, until there is delivered to ~~him~~ that person a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage ~~is intended to take place~~ license was issued or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage ceremony.

Whenever a man and woman have been lawfully married in accordance with the laws of the state in which the marriage ceremony took place, and said marriage was performed by a ~~justice of the peace~~ magistrate or some other civil official duly authorized to perform such ceremony, and the parties thereafter wish to confirm their marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in a ceremony recognized by any religious denomination, federally or State recognized Indian Nation or Tribe, nothing herein shall be deemed to prohibit such confirmation ceremony; provided, however, that such confirmation ceremony shall not be deemed in law to be a marriage ceremony, such confirmation ceremony shall in no way affect the validity or invalidity of the prior marriage ceremony performed by a civil official, no license for such confirmation ceremony shall be issued by a register of deeds, and no record of such confirmation ceremony may be kept by a register of deeds."

SECTION 4. G.S. 51-7 reads as rewritten:

"**§ 51-7. Penalty for solemnizing without license.**

Every ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, who marries any couple without a license being first delivered to ~~him,~~ that person, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within 10 days after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars ($200.00) to any person who sues therefore, and ~~he~~ shall also be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons ~~if it appears that such persons~~ who are able to answer the questions regarding age, marital status, and intention to marry, and, based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

SECTION 6. Chapter 51 of the General Statutes is amended by adding the following new section:

"**§ 51-8.2. Issuance of marriage license when applicant is unable to appear.**

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds' office, the applicant may submit a sworn and notarized affidavit in lieu of personal appearance.

The affidavit shall be in the following or some equivalent form:

_____. (Applicant) appearing before the undersigned notary and being duly sworn, says that:

1. I, _____, [applicant's name] am applying for a license in _____ County, NC to marry _____ [name of other applicant] in North Carolina within the next 60 days and I am authorized under G.S. 51-8.2 to complete this Affidavit in Lieu of Personal Appearance for Marriage License Application.

   I attach: (1) documentation that I am over 18 years of age as required in county of marriage; and (2) documentation of divorce as required by county of marriage.

2. I submit the following information in applying for a marriage license:

   Name: _____

   First Middle Last

   Residence: _____

State County City or Town

_____

_____

Street and Number Inside City Limits (Yes or No)

Birthplace: _____ Birth Date _____ Age: _____

County & State or Country

Father: _____

Name State of Birth Address (if living) or Deceased

Mother: _____

_____

Name State of Birth Address (if living) or Deceased

Race (Optional): _____ Number of this marriage: _____

1st, 2nd, etc.

Last Marriage Ended by: _____ Date Marriage Ended: _____

_____

Death, Divorce, Annulment

Specify Highest Grade Completed in School (Optional): _____

Social Security # _____ (If applicant does not have Social Security number, attach affidavit of ineligibility)

I hereby make application to the Register of Deeds for a Marriage License and solemnly swear that all of the statements contained in the above application are true and I further make oath that there is no legal impediment to such marriage. _____

_____ Signature of Applicant

Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____.

_____

[Seal] Notary Public

_____ My commission expires: _____

[Notary's typed or printed name]"

SECTION 7. G.S. 51-15 reads as rewritten:

"**§ 51-15. Obtaining license by false representation misdemeanor.**

If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class ~~3~~1 misdemeanor. "

SECTION 8. G.S. 51-16 reads as rewritten:

"**§ 51-16. Form of license.**

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by ~~his~~ a church, ~~or to~~ any ~~magistrate for _____ County:~~ magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged _____ years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or

dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county.~~State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this _____ day of_____, _____

_____ L.M.

Register of Deeds of _____ County

Every register of deeds ~~shall~~ shall, at the request of an applicant, designate in ~~every~~ a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white,"~~"colored, or "Indian,"~~ "black,""African American,""American Indian,""Alaska Native,""Asian Indian,""Chinese,""Filipino,""Japanese,""Korean,""Vietnamese,""Other Asian,""Native Hawaiian,""Guamarian,""Chamorro,""Samoan,""Other Pacific Islander,""Mexican,""Mexican American,""Chicano,""Puerto Rican,""Cuban,""Other Spanish/Hispanic/Latino,"or"other,"as the case may be. The certificate shall be filled up and signed by the ~~minister or officer~~ minister, officer, or other authorized individual celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the _____ day of _____, _____, at the house of P.R., in (here name the town, if any, the township and county), according to law.

_____N.O.

Witness present at the marriage:

S.T., of (here give residence)."

SECTION 9. G.S. 51-18.1 reads as rewritten:

"**§ 51-18.1. Correction of errors ~~in names~~ in application or license; amendment of names in application or license.**

(a) When it shall appear to the register of deeds of any county in this State that ~~the names of either or both parties to a marriage~~ information is incorrectly stated on an application for a marriage license, or upon a marriage license issued thereunder, or upon a return or certificate of an officiating officer, the register of deeds is authorized to

correct such record or records ~~to show the true name and names of the parties to the marriage~~ upon being furnished with an affidavit signed by one or both of the applicants for the marriage license, accompanied by affidavits of at least two other persons who know the ~~true name or names of the person or persons seeking such correction.~~ correct information.

(b) When the name of a party to a marriage has been changed by court order as a result of a legitimation action or other cause of action, and the party whose name is changed ~~present~~ presents a signed affidavit to the register of deeds indicating the name change and requesting that the application for a marriage license, the marriage license, and the marriage certificate of the officiating officer be amended by substituting the changed name for the original name, the register of deeds may amend the records as requested by the party, provided the other party named in the records consents to the amendment."

SECTION 10. Sections 4 and 7 of this act become effective October 1, 2001, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-5 [v.6]

Date _____,2001

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Representative Alexander

moves to amend the bill on page 1, lines 4 and 5, be rewriting those lines to read:
"JUDICIAL APPROVAL BEFORE AN APPLICANT BETWEEN THE AGE OF TWELVE- AND SIXTEEN-YEARS OF AGE MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS'";

and on page 2 and 3, line 6 on page 2 through line 10 on page 3, by rewriting those lines to read:

"**SECTION 2.** G.S. 51-2 reads as rewritten:

'§ 51-2. Capacity to marry.

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden.

(a1) ~~In addition, persons~~ Persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

(3) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry;

(4) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of ~~such~~ the male or female child applying to ~~marry.~~ marry; or

(5) If the party applying to marry no longer resides with that party's parent but resides with an adult relative of the party and if the party has neither a legal custodian nor guardian, a district court judge may enter an order allowing the consent to be given by the adult relative with whom the party resides standing in loco parentis.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) When an unmarried female who is more than 12 years old, but less than ~~18~~ 16 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, ~~and~~ or an unmarried male who is more than 12 years old, but less than 16 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, the register of deeds is authorized to issue to the parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter, only after the following has been filed with the register of deeds:

(1)~~consent~~ Written consent ~~in writing~~ to such marriage, as set out in subsection ~~(a),~~ (a1), subdivisions ~~(1), (2), (3) or (4)~~ (3), (4), or (5) above, ~~or by the director of social services of the county of residence of either party, is given~~ on the part of the ~~female,~~ underage party; and

(2) A district court finding that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest.

~~the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.~~

(b1) Upon the showing to the district court by the underage party that he or she no longer resides with a parent, guardian, or person having legal custody of the underage party, the district court shall waive the consent requirements under subsection (b), subdivision (1).

(b2) In determining whether the marriage will serve the best interest of an underage party the district court shall consider the relationship between the underage party and the parents of the underage party, as well as the relationship between the underage party and any person having legal custody or serving as a guardian of the underage party. The fact that the female is pregnant, or has given birth to a child, alone does not establish that the best interest of the underage party will be served by the marriage.

(b3) It shall be unlawful for any person under 12 years old to marry.

(c) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-5 [v.6]

SIGNED Martha B. Alexander
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT XI

Diocese of Raleigh

The Tribunal

715 Nazareth Street • Raleigh, North Carolina 27606-2187 • (919) 821-9700 • Fax: (919) 821-9705

1 March 2001

Representative Ronnie Neal Sutton, Esq.
Members of the Judiciary I
North Carolina House of Representatives

RE **House Bill 142**

Dear Representative Sutton and Committee Members,

I was pleased to have been present for your consideration of House Bill 142 this past Tuesday morning.

For the past fifteen years I have served in the Court of First Instance of the Catholic Diocese of Raleigh and have read the cases of thousands of marriage which for one reason or another ended in divorce. Because of this I bring considerable interest and numerous concerns to the proposed marriage law reform bill.

My concerns center on the implications of three factors: age, pregnancy and the child resulting from the pregnancy.

At Tuesday's session, Representative Blust apologized for using the word "children" when referring to that section of the proposed bill that would allow the marriage of a boy and a girl who are less than 14 years of age. However, they are children and wholly unprepared to assume the responsibilities of marriage. Experience has shown that even those in the 16-18 age range in our present society ordinarily lack sufficient maturity to assume the responsibilities of marriage. Sadly, many in their twenties are similarly lacking

The rationale for permitting the marriage of these children under the age of sixteen as stated in sub-section (b) and (c) appears to be pregnancy or a child already born. Therefore, any consideration must be cognizant of the interests and welfare of this third party, the child. This is the one who has no choice and no protection against abuse or neglect by those who lack the capacity to assume the responsibilities of marriage, which includes the care of a child. As a Guardian ad Litem in Wake County, I have seen firsthand the harm done to children by mothers and fathers who are unprepared or unable to parent.

I respectfully present for the Committee's consideration three points:

1. That any recommendation concerning age designations in §51-2, (b) and © be made only after the committee has heard from several marriage and family therapists.

2. That only those who have completed their fourteenth year be permitted to marry.

3. That those who have completed their fourteenth year but not completed their sixteenth year be permitted to marry only with consent as set out in subsection (a), subdivisions (1) and (2) and only if a district or family court finds that the underage party is capable of assuming the responsibilities of marriage according to pre-determined guidelines established in consultation with marriage and family therapists.

   In cases which involve a child, born or unborn, the highest priority is to be given to evaluating the parties' capability and commitment to provide a safe and healthful environment in which to rear the child.

Ministers of all religious denominations are increasingly expressing their concern about the escalating divorce rate in this country. Most agree that one place to begin to address the problem is the provision of better pre-marital preparation. I read of one judge in (I believe) Michigan, who will not issue a license for marriage in his county until the couple has completed six sessions with a marriage counselor. Attorneys throughout the country are similarly concerned.

The North Carolina legislature could show the way in true reform but it will take courage and study. I support your efforts and applaud your willingness to examine the issues.

Sincerely,

Patricia M. Wilson, S.C.

Sister Patricia M. Wilson, S.C.
Administrator of the Tribunal

House Judiciary I Committee

March 6, 2001

Minutes

The House Judiciary I Committee met on Tuesday, March 6, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Sutton was recognized to continue discussion of the Proposed Committee Substitute for House Bill 142, AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE-OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment III). The proposed committee was adopted for discussion during the March 1, 2001 meeting. Representative Sutton explained the remaining sections of the bill. A copy of the bill analysis is attached, (Attachment IV).

Representative Alexander requested that the pending amendment that she offered during the March 1, 2001 meeting be removed. She offered a substitute amendment, (Attachment IV), and was recognized to explain the amendment. She said that the amendment states that the consent requirement **may** be waived, and sets criteria for the court to consider in making a decision to waive the consent requirement.

Mr. Rick Zechini, Committee Counsel, noted that the consent that could be waived is not the judicial consent, but the consent being given either by a parent, a guardian, or an adult relative with whom the child is living.

Representative Sutton suggested that the amendment could raise the question of what happens when parents do not give consent, and whether it would prohibit the judge from moving forward with a judicial determination.

Mr. Zechini said that he thought the amendment would allow the court to waive the consent and go forward.

Representative Sutton noted that some concern had been expressed regarding a situation in which one parent over-rules another parent. He said that he would not be opposed to an amendment that would rectify that situation. He requested that staff look into this and prepare possible amendments.

Considerable discussion followed.

Chairman Hackney asked if the committee favored the involvement of a judge in the process of granting approval for a marriage to occur. It was determined that none of the members were opposed to judicial involvement. He then noted that the committee should determine when, and under what circumstances a judge should be involved. He further noted that the bill title should be opened up in order to allow the House to work its will when the bill gets to the floor.

Representative Arnold stated that he planned to propose an amendment that would prevent any child from marrying until the child reaches the age of sixteen, except for certain circumstances.

Chairman Hackney asked Representative Arnold if the amendment would be a perfecting amendment to Representative Alexander's amendment, or if would be a separate amendment?

Ms. Susan Sitze, Committee Counsel, said that the amendment is drafted toward the committee substitute rather than to the Alexander amendment. She said that if the Committee adopted the Arnold amendment the entire discussion would be a moot point and that a new amendment would have to be offered to involve judges.

Chairman Hackney appointed the following members to serve on a subcommittee for further study of House Bill 142: Representative Sutton, chair, Representative Alexander, Representative Arnold, Representative Blust and Representative Nesbitt.

Representative Arnold had requested during an earlier meeting that staff provide information regarding statutory rape, mental capacity and ages as they relate to school law. This information was distributed to the members of the committee, (Attachment VI).

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 6, 2001

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 142 – AMEND MARRIAGE STATUTES
REPRESENTATIVE RON SUTTON

Last meeting: Proposed Committee Substitute
adopted for discussion

Amendment by Rep. Alexander offered and discussed
Previous amendment withdrawn

*(Sutton amendment that has not been offered)

VISITOR REGISTRATION SHEET

JUDICIARY I — **March 6, 2001**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom M Kilbane	Moore & Van Allen
Lora Mooney Byrd	Register of Deeds - Pitt County
Amanda W Garrott	Register of Deeds - Person County
Betty Smith	for Rep. Margo Carpenter
Doris Weaver	NC CWA Political Council
Mark M Jones	Teamsters Local 391
Leanne Winner	NCSBA
John D Kuhn	NCFPC
Jane Winn	NC-NAW
Jo B. McCants	AOC
Mark Osborne	AOC
Jeff Ream	GRNC
Bhnathon Rhyne	
Cameron Rhyne	
M. Crawford Rhyne	
Ken D. Howell	Comm's Office

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 142*
PROPOSED COMMITTEE SUBSTITUTE H142-CSSA-1 [v.5]

2/28/2001 5:53:59 PM

Short Title: Amend Marriage Statutes. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE- OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the ~~The~~ consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, ~~and~~ either:

(1) a. in the presence of an ordained minister of any religious denomination, a minister authorized by ~~his~~ a church, or ~~of a magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife,~~ a magistrate; and

b. ~~and~~ with the consequent declaration by ~~such~~ the minister or ~~officer~~ magistrate that ~~such~~ the persons are husband and ~~wife,~~ wife; or

(2) in accordance with any mode of solemnization recognized by any religious denomination, federally or State recognized Indian Nation or Tribe. ~~shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered~~

~~with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. G.S. 51-2 reads as rewritten:

"**§ 51-2. Capacity to marry.**

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

(3) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry; or

(4) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of such male or female child applying to marry.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(a1) When an unmarried female who is 14 or 15 years of age is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or an unmarried male who is 14 or 15 years of age is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, and consent in writing to the marriage, as set out in subsection (a), subdivisions (3) and (4) above, is given on the part of the underage male or female applying to marry, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.

(b) When an unmarried female who is ~~more than 12 years old, but~~ less than ~~18~~ 14 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an unmarried male who is less than 14 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, ~~and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2), (3) or (4) above, or by the director of social services of the county of residence of either party, is given on the part of the female,~~ the register of deeds is authorized to issue to

said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this ~~Chapter.~~ Chapter, only if a district court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(c) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

SECTION 3. G.S. 51-6 reads as rewritten:

"**§ 51-6. Solemnization without license unlawful.**

No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, shall perform a ceremony of marriage between a man and woman, or shall declare them to be husband and wife, until there is delivered to ~~him~~ that person a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage ~~is intended to take place~~ license was issued or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage ceremony.

Whenever a man and woman have been lawfully married in accordance with the laws of the state in which the marriage ceremony took place, and said marriage was performed by a ~~justice of the peace~~ magistrate or some other civil official duly authorized to perform such ceremony, and the parties thereafter wish to confirm their marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in a ceremony recognized by any religious denomination, federally or State recognized Indian Nation or Tribe, nothing herein shall be deemed to prohibit such confirmation ceremony; provided, however, that such confirmation ceremony shall not be deemed in law to be a marriage ceremony, such confirmation ceremony shall in no way affect the validity or invalidity of the prior marriage ceremony performed by a civil official, no license for such confirmation ceremony shall be issued by a register of deeds, and no record of such confirmation ceremony may be kept by a register of deeds."

SECTION 4. G.S. 51-7 reads as rewritten:

"**§ 51-7. Penalty for solemnizing without license.**

Every ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, who marries any couple without a license being first delivered to ~~him,~~ that person, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within 10 days after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars ($200.00) to any person who sues therefore, and ~~he~~ shall also be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons ~~if it appears that such persons~~ who are able to answer the questions regarding age, marital status, and intention to marry, and, based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

SECTION 6. Chapter 51 of the General Statutes is amended by adding the following new section:

"**§ 51-8.2. Issuance of marriage license when applicant is unable to appear.**

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds' office, the applicant may submit a sworn and notarized affidavit in lieu of personal appearance.

The affidavit shall be in the following or some equivalent form:

_____. (Applicant) appearing before the undersigned notary and being duly sworn, says that:

1. I, _____. [applicant's name] am applying for a license in _____ County, NC to marry _____ [name of other applicant] in North Carolina within the next 60 days and I am authorized under G.S. 51-8.2 to complete this Affidavit in Lieu of Personal Appearance for Marriage License Application.

   I attach: (1) documentation that I am over 18 years of age as required in county of marriage; and (2) documentation of divorce as required by county of marriage.

2. I submit the following information in applying for a marriage license:

   Name: _____

   First Middle Last

   Residence: _____

State County City or Town

Street and Number Inside City Limits (Yes or No)

Birthplace: Birth Date Age:

County & State or Country

Father:

Name State of Birth Address (if living) or Deceased

Mother:

Name State of Birth Address (if living) or Deceased

Race (Optional): Number of this marriage:

1st, 2nd, etc.

Last Marriage Ended by: Date Marriage Ended:

Death, Divorce, Annulment

Specify Highest Grade Completed in School (Optional):

Social Security # (If applicant does not have Social Security number, attach affidavit of ineligibility)

I hereby make application to the Register of Deeds for a Marriage License and solemnly swear that all of the statements contained in the above application are true and I further make oath that there is no legal impediment to such marriage.

Signature of Applicant

Sworn to (or affirmed) and subscribed before me

this day of , .

[Seal] Notary Public

My commission expires:

[Notary's typed or printed name]"

SECTION 7. G.S. 51-15 reads as rewritten:

"**§ 51-15. Obtaining license by false representation misdemeanor.**

If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class ~~3~~1 misdemeanor. "

SECTION 8. G.S. 51-16 reads as rewritten:

"**§ 51-16. Form of license.**

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by ~~his~~ a church, ~~or to~~ any ~~magistrate for County:~~ magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or

dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county.~~State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this _____ day of_____, _____

_____ L.M.

Register of Deeds of _____ County

Every register of deeds ~~shall~~ shall, at the request of an applicant, designate in ~~every~~ a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white,"~~"colored, or "Indian,"~~ "black,""African American,""American Indian,""Alaska Native,""Asian Indian,""Chinese,""Filipino,""Japanese,""Korean,""Vietnamese,""Other Asian,""Native Hawaiian,""Guamarian,""Chamorro,""Samoan,""Other Pacific Islander,""Mexican,""Mexican American,""Chicano,""Puerto Rican,""Cuban,""Other Spanish/Hispanic/Latino,"or"other,"as the case may be. The certificate shall be filled up and signed by the ~~minister or officer~~ minister, officer, or other authorized individual celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the _____ day of _____, _____, at the house of P.R., in (here name the town, if any, the township and county), according to law.

_____N.O.

Witness present at the marriage:

S.T., of (here give residence)."

SECTION 9. G.S. 51-18.1 reads as rewritten:

"**§ 51-18.1. Correction of errors ~~in names~~ in application or license; amendment of names in application or license.**

(a) When it shall appear to the register of deeds of any county in this State that ~~the names of either or both parties to a marriage~~ information is incorrectly stated on an application for a marriage license, or upon a marriage license issued thereunder, or upon a return or certificate of an officiating officer, the register of deeds is authorized to

correct such record or records ~~to show the true name and names of the parties to the marriage~~ upon being furnished with an affidavit signed by one or both of the applicants for the marriage license, accompanied by affidavits of at least two other persons who know the ~~true name or names of the person or persons seeking such correction.~~ correct information.

(b) When the name of a party to a marriage has been changed by court order as a result of a legitimation action or other cause of action, and the party whose name is changed ~~present~~ presents a signed affidavit to the register of deeds indicating the name change and requesting that the application for a marriage license, the marriage license, and the marriage certificate of the officiating officer be amended by substituting the changed name for the original name, the register of deeds may amend the records as requested by the party, provided the other party named in the records consents to the amendment."

SECTION 10. Sections 4 and 7 of this act become effective October 1, 2001, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2001.

HOUSE BILL 142:
Amend Marriage Statutes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Sutton
Date:	February 27, 2001	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 142 broadens the list of persons authorized to solemnize a marriage, changes consent requirements for underage applicants, limits the responsibilities of registers of deeds in issuing licenses, provides a procedure by which applicants who are unable to appear at the register of deeds' office may apply for a license, increases the penalty for obtaining a license by misrepresentation, expands the geographical scope of a marriage license, makes inclusion of race on the license optional, and provides for the correction of errors on a marriage license or application.

What follows is a summary of the sections of the bill:

1. **Persons authorized to solemnize a marriage.** Currently the law in North Carolina allows for solemnization of a marriage only by a magistrate, an ordained minister, or a minister authorized by his church. While there are specific exceptions carved out for the Bahai's and the Society of Friends, there are several religious groups whose marriage ceremonies are not recognized as valid in North Carolina. This preferential treatment for certain religious groups has raised constitutional questions. This section amends G.S. 51-1 by expanding the list of persons authorized to solemnize a marriage to be inclusive of all religious groups, and eliminates specific exemptions for the Bahai's and the Society of Friends. The new language closely follows the language recommended by the Uniform Marriage and Divorce Act.

2. **Marriage of underage applicants.** Currently the law in North Carolina allows an individual who is between the ages of 16 and 18 to apply for a marriage license with parental consent. A female applicant between the ages of 12 and 16 may marry with the same type of consent only if the female applicant is pregnant or has given birth and intends to marry the father of the child. The statute is silent as to male applicants between the ages of 12 and 16. This section of the bill amends G.S. 51-2 to clarify who is authorized to consent to the marriage of an applicant between the ages of 16 and 18. It requires the same type of consent for applicants who are 14 or 15 years of age when the female applicant is pregnant or has given birth, but requires judicial consent in cases where the applicant is under the age of 14 and the female applicant is pregnant or has given birth. This section also makes clear that the provisions apply to both male and female applicants.

3. **Conforming changes.** This section makes conforming changes to G.S. 51-6.

4. **Conforming changes.** This section makes conforming changes to G.S. 51-7.

5. **Responsibilities of Registers of Deeds.** The current statute is vague as to what exactly the Register of Deeds' responsibilities are in issuing a license. However, over the years the burden of determining whether an applicant for a marriage license is mentally competent has fallen to the Register of Deeds who issues the license. This section of the bill amends G.S. 51-8 to specifically require that a Register of Deeds only be responsible for verifying objective requirements before issuing a license.

6. **Issuance of license when applicant is unable to appear.** Currently both applicants for a marriage license are required to appear in person at the Register of Deeds' office. The statutes do not address situations where an applicant is unable to appear. This section of the bill creates a procedure by

which an individual who is unable to appear in person at the Register of Deeds' office may apply for a marriage license by submitting a sworn and notarized affidavit in lieu of personal appearance.

7. **Penalty for aiding and abetting in obtaining license by misrepresentation.** Under the current law, a person who obtains a marriage license by misrepresentation or false pretenses is guilty of a Class 3 misdemeanor. This section makes aiding and abetting in obtaining a license by misrepresentation or false pretenses an equally punishable offense and raises it from a Class 3 misdemeanor to a Class 1 misdemeanor.

8. **Geographical scope of a marriage license.** Under the current law, a marriage license is only valid in the county in which it is issued. This section expands the scope of the license so that it is valid in any county in the State as long as it is returned to the Register of Deeds' office in the county in which it was issued.

Designation of race on a marriage license. The current law requires that race be indicated on the marriage license and offers as options either "white", "colored", or "Indian". This section of the bill also amends G.S. 51-16 by making the designation of race on a marriage license optional, and by updating and expanding the options an applicant has to choose from to be inclusive of all races. The options listed are the same options listed on the 2000 U.S. Census form.

9. **Correction of errors.** The current statute allows for corrections of errors in the names of the parties on an application or marriage license through submission of affidavits containing the correct information. This section amends G.S. 51-18.1 to allow all errors on an application or license to be corrected through the same procedure set out in the statute for the correction of errors in the names.

10. **Effective date.** The act would be effective when it becomes law.

Wendy L. Graf, counsel to the LRC's Committee on Marriage License Laws, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-5 [v.8]

Date _____,2001

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Representative Alexander

moves to amend the bill on page 1, lines 4 and 5, be rewriting those lines to read:
"JUDICIAL APPROVAL BEFORE AN APPLICANT BETWEEN THE AGE OF TWELVE- AND SIXTEEN-YEARS OF AGE MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS'";

and on page 2 and 3, line 6 on page 2 through line 10 on page 3, by rewriting those lines to read:

"**SECTION 2.** G.S. 51-2 reads as rewritten:

'§ 51-2. Capacity to marry.

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden.

(a1) ~~In addition, persons~~ Persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

(3) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry;

(4) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of ~~such~~ the male or female child applying to ~~marry.~~ marry; or

(5) If the party applying to marry no longer resides with that party's parent but resides with an adult relative of the party and if the party has neither a legal custodian nor guardian, a district court judge may enter an order allowing the consent to be given by the adult relative with whom the party resides standing in loco parentis.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) When an unmarried female who is more than 12 years old, but less than ~~18~~ 16 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, ~~and~~ or an unmarried male who is more than 12 years old, but less than 16 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, the register of deeds is authorized to issue to the parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter, only after the following has been filed with the register of deeds:

(1)~~consent~~ Written consent ~~in writing~~ to such marriage, as set out in subsection ~~(a),~~ (a1), subdivisions ~~(1), (2), (3) or (4)~~ (3), (4), or (5) above, ~~or by the director of social services of the county of residence of either party, is given~~ on the part of the ~~female,~~ underage party; and

(2) A district court finding that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest.

~~the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.~~

(b1) Upon the showing to the district court by the underage party that he or she no longer resides with a parent, guardian, or person having legal custody of the underage party, the district court may waive the consent requirements under subsection (b), subdivision (1). In determining whether to waive the consent requirements under subsection (b), subdivision (1), the district court shall consider the length of time that the underage party has resided away from a parent, guardian, or person having legal custody of the underage party, the reason that the underage party no longer resides with a parent, guardian, or person having legal custody of the underage party, and information on the person or persons, if any, with whom the underage party is residing.

(b2) In determining whether the marriage will serve the best interest of an underage party the district court shall consider the relationship between the underage party and the parents of the underage party, as well as the relationship between the underage party and any person having legal custody or serving as a guardian of the underage party. The fact that the female is pregnant, or has given birth to a child, alone does not establish that the best interest of the underage party will be served by the marriage.

(b3) It shall be unlawful for any person under 12 years old to marry.

(c) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASG-5 [v.8]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Marriage and Minors

Emancipation

One overriding issue in considering the impact of minors marrying is that North Carolina automatically recognizes a married minor as emancipated. (G.S. 7B-3509) The effect of emancipation is to make the minor the "same" as an adult in a couple of ways. An emancipated minor may contract, sue & be sued, and generally transact business as if they were an adult. Emancipation also relieves the parent, guardian, or custodian of all legal duties and obligations owed to the minor.

School Attendance

The compulsory school attendance laws (G.S. 115C-378) are probably not in conflict with minors marrying and supporting their families. However, the statutes do not specifically address this issue. The school attendance laws are written to require that parents make sure their children attend school. There is actually no requirement that the minor attend school in general. Therefore, it appears that if the minor is married, and therefore emancipated, the parent no longer has control over the child and is no longer under the legal obligation to ensure that they attend school. **Arguably**, the minor does not have to attend school, however there is nothing that addresses this issue specifically.

Youth Employment

Concerning a minor's ability to work and support their family, there are restrictions on youth employment. (G.S. 95-25.5) Minors under 18 can only work certain jobs and certain hours depending on their actual age. There is however a process for obtaining an exemption from these restrictions based on hardship and need to help support a family. However, the exemption process requires parental consent and does not address whether an exemption can be obtained if the minor has been emancipated.

First Degree Rape, First Degree Sex Offense, and Statutory Rape

Regarding rape and statutory rape and minor victims, there are a couple of statutes that come into play. In general, it is illegal for any minor under the age of 16 to have sex with someone that is at least 4 years older than the minor. Specifically, there are 3 main statutes that apply. First degree rape or first degree sex offense (G.S. 14-27.4) is a Class B1 felony and is committed if the victim is less than 13 years old and the defendant is at least 12 years old and at least 4 years older than the victim. This is a crime, even after the minor is married to the offender. Statutory rape (G.S. 14-27.7A) involves a victim that is 13, 14, or 15 years old and has two "levels" of offense based on the age of the defendant. If the defendant is at least 6 years older than the victim, it is a Class B1 felony. If the defendant is more than 4, but less than 6 years older than the victim, it is a Class C felony. Statutory rape is

no longer a crime once the parties are married. Legally, any offense that occurs before marriage may still be prosecuted. However, in most cases, prosecutors choose not to prosecute this offense once the parties are married.

§ 7B-3509. Application of common law.

A married juvenile is emancipated by this Article. All other common-law provisions for emancipation are superseded by this Article.

(1979, c. 815, s. 1; 1998-202, s. 6.)

§ 115C-378. Children required to attend.

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or other person in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school. No person shall encourage, entice or counsel any such child to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school policy.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal or his designee shall notify the parent, guardian, or custodian of his child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal shall notify the parent, guardian, or custodian by mail that he may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The

attendance counselor may request that a law-enforcement officer accompany him if he believes that a home visit is necessary.

After 10 accumulated unexcused absences in a school year the principal shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and his parent, guardian, or custodian if possible to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that parent, guardian, or custodian has not, he shall notify the district attorney. If he determines that parent, guardian, or custodian has, he may file a complaint with the juvenile intake counselor pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences.

(1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846; 1975, c. 678, s. 2; c. 731, s. 3; 1979, c. 847; 1981, c. 423, s. 1; 1985, c. 297; 1991 (Reg. Sess., 1992), c. 769, s. 2; 1998-202, s. 13(aa).)

§ 95-25.5. Youth employment.

(a) No youth under 18 years of age shall be employed by any employer in any occupation without a youth employment certificate unless specifically exempted. The Commissioner of Labor shall prescribe regulations for youths and employers concerning the issuance, maintenance and revocation of certificates. Certificates will be issued, subject to review by the Department of Labor, by county directors of social services and such of their designees as are approved by the Commissioner; provided, the Commissioner may also issue certificates, both directly and electronically.

(a1) During the regular school term, no youth under 18 years of age who is enrolled in school in grade 12 or lower may be employed between 11 P.M. and 5 A.M. when there is school for the youth the next day. This restriction does not apply to youths 16 and 17 years of age if the employer receives written approval for the youth to work beyond the stated hours from the youth's parent or guardian and from the youth's principal or the principal's designee.

(b) No youth under 18 years of age may be employed by an employer in any occupation which the United States Department of Labor shall find and by order declare to be hazardous and without exemption under the Fair Labor Standards Act, or in any occupation which the Commissioner of Labor after public hearing shall find and declare to be detrimental to the health and well-being of youths.

(c) No youth 14 or 15 years of age may be employed by an employer in any occupation except those determined by the United States Department of Labor to be

permitted occupations under the Fair Labor Standards Act; provided, such youths may be employed by employers:

(1) No more than three hours on a day when school is in session for the youth;

(2) No more than eight hours on a day when school is not in session for the youth;

(3) Only between 7 A.M. and 7 P.M., except to 9 P.M. during the summer (when school is not in session);

(4) No more than 40 hours in any one week when school is not in session for the youth;

(5) No more than 18 hours in any one week when school is in session for the youth; and

(6) Only outside school hours.

Notwithstanding the above, enrollees in high school apprenticeships or in work experience and career exploration programs as defined under the Fair Labor Standards Act may work up to 23 hours in any one week when school is in session, any portion of which may be during school hours.

(d) No youth 13 years of age or less may be employed by an employer, except youths 12 and 13 years of age may be employed outside school hours in the distribution of newspapers to the consumer but not more than three hours per day. An employment certificate shall not be required for any youth under 18 years of age engaged in the distribution of newspapers to the consumer outside of school hours.

(e) No youth under 16 years of age shall be employed for more than five consecutive hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

(f) For any youth 13 years of age or older, the Commissioner may waive any provision of this section and authorize the issuance of an employment certificate when:

(1) He receives a letter from a social worker, court, probation officer, county department of social services, a letter from the North Carolina Alcohol Beverage Control Commission or school official stating those factors which create a hardship situation and how the best interest of the youth is served by allowing a waiver; and

(2) He determines that the health or safety of the youth would not be adversely affected; and

(3) The parent, guardian, or other person standing in loco parentis consents in writing to the proposed employment.

(g) Youths employed as models, or as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from all provisions of this section except the certificate requirements of subsection (a).

(h) Youths employed by an outdoor drama directly in production-related positions such as stagehands, lighting, costumes, properties and special effects are exempt from all provisions of this section except the certificate requirements of subsection (a). Positions such as office workers, ticket takers, ushers and parking lot attendants have no exemption and are subject to all provisions of this section.

(i) Youths under 18 years of age employed by their parents are exempt from all provisions of this section, except for all of the following:

(1) The certificate requirements of subsection (a) of this section.

(2) The prohibition from hazardous or detrimental occupations of subsection (b) of this section.

(3) The prohibitions of subsection (j)(2) of this section if the youths only work at the establishment when another employee at least 21 years of age is in charge of and present at the licensed premises.

(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages, including any mixed beverages, shall employ a youth:

(1) Under 16 years of age on the premises for any purpose;

(2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages.

(k) Persons and establishments required to comply with or subject to regulation of child labor under the Fair Labor Standards Act are exempt from all provisions of this section, except the certificate requirements of subsection (a), the provisions of subsection (a1), the prohibition from occupations found and declared to be detrimental by the Commissioner of Labor pursuant to subsection (b), and the prohibitions of subsection (j). In addition, employment certificates will not be issued if such person's employment will be in violation of the applicable child labor provisions of the Fair Labor Standards Act. Such employers may also be assessed civil penalties pursuant to G.S. 95-25.23 for each violation of the provisions of this section or any regulation issued hereunder from which there is no exemption.

(l) Notwithstanding any other provision of this section, any youth who holds a North Carolina driver's license valid for the type of driving involved may be assigned as part of his employment to drive an automobile or truck not exceeding 6,000 pounds gross vehicle weight within a 25-mile radius of the principal place of employment, provided that the youth has completed a State-approved driver-education course, and provided that the assignment does not involve the towing of vehicles. "Gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

(1937, c. 317, ss. 1-3, 6, 9, 18; 1943, c. 670; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962; 1973, c. 649, s. 1; c. 758, s. 1; 1977, c. 551, ss. 1-4; 1979, c. 839, s. 1; 1981, c. 412, ss. 3, 4; c. 489, ss. 1-7; c. 747, s. 66; 1985, c. 97, s. 1; 1987, c. 154; 1991, c. 492, s. 2; 1991 (Reg. Sess., 1992), c. 991, s. 1; 1993, c. 239, s. 1; 1995, c. 214, s. 1; 1999-237, s. 14.1.)

§ 14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175; ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2.)

§ 14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 6; 1981, c. 63; c. 106, ss. 3, 4; c. 179, s. 14; 1983, c. 175, ss. 5, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 3.)

§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the

defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.

(1995, c. 281, s. 1.)

House Judiciary I Committee

March 13, 2001

Minutes

The House Judiciary I Committee met on Tuesday, March 13, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The first bill to be considered by the Committee was House Bill 342, AN ACT RELATING TO THE ADMISSIBILITY, PHOTOGRAPHIC REPRODUCTION, AND RETENTION OF RECORDS OF THE EMPLOYMENT SECURITY COMMISSION, (Attachment III).

Mr. Frank Folger, Committee Counsel, was recognized to explain the bill. Mr. Folger explained that the bill would allow the Employment Security Commission to photocopy ESC records and required filings, to use copies certified by the ESC as admissible evidence, and to destroy the original record upon order of the Chairman of the ESC either when a copy of the original has been made, or after three years have passed. Further explanation of the bill is found in the bill analysis that is attached to the minutes, (Attachment IV).

Mr. Thomas Whitaker, Employment Security Commission, was recognized and spoke in support of the bill.

Representative Arnold moved that the bill be given a favorable report. The motion carried, (Attachment V).

Representative Redwine was recognized to explain House Bill 343 AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS, (Attachment VI). Representative Redwine offered a proposed committee substitute, (Attachment VII) and moved its adoption for the purpose of discussion. The motion carried. Representative Redwine said that the bill removes the sunset provisions relating to the employment security laws that were put into place in 1997. He said that the first section of the bill would remove the sunset on the alternate base period. The alternate base period allows claimants who are monetarily ineligible to qualify for benefits if they have wages in the four most recently completed calendar quarters. A bill analysis is attached to the minutes, (Attachment VIII).

Mr. Whitaker spoke in support of the removal of the sunset.

Representative Redwine explained Section 2 of the bill regarding the removal of the sunset on the shift restriction provision. This provision allows a worker who is employed and who is forced to

change shifts or quit work to qualify for benefits. This section applies only if the worker cannot work another shift because of childcare or elder care responsibilities. He said that the cost to the trust fund for this benefit has been minimal.

Representative Arnold asked if the provision was limited to childcare or elder care, or is it for family hardship?

Ms. Susan Sitze, Committee Counsel, said that undue family hardship is defined as being unable to obtain childcare during a shift for a minor child under the age of 14, or elder care during that shift for an aged or disabled parent.

Chairman Hackney asked why the provision is limited to a disabled parent as opposed to another member of the family who may be disabled.

Mr. David Clegg, ESC, said that this was compromise language from 1997.

Representative Nesbitt asked why a spouse is not included.

Representative Arnold questioned whether the businessman should be expected to pay for the entire family.

Representative Sutton stated that he felt the inclusion of the spouse would be more fair than the parent.

Chairman Hackney asked if the ESC had any information on the costs of the program.

Mr. Raymond Goodman, ESC, said that they could not say how much the expansion would cost, but that under the existing provisions, the cost has only been $8,000 for the past two years.

Representative Nesbitt noted that the employer does not pay, but that the funds come from the Employment Security Trust Fund.

Representative Insko asked if the committee could get an estimate on the cost to the fund if the bill were to include any disabled member of the immediate family.

Representative Redwine said that the coverage had been narrowed in 1999 due to concerns of the condition of the trust fund, but that he did not oppose the expansion of coverage if the trust fund is not negatively impacted.

The bill was temporarily displaced to allow staff time to prepare amendments.

Representative Redwine was recognized to explain House Bill 344, AN ACT RELATING TO THE ANNUAL FILING OF WAGE REPORTS BY DOMESTIC SERVICE EMPLOYERS UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA, (Attachment IX). The bill allows for wage reports once a year instead of four times a year for domestic service employees. A bill analysis is attached, (Attachment X).

Representative Redwine moved a favorable report. The motion carried, (Attachment XI).

The committee returned to the discussion of Section 3 of the proposed committee substitute for House Bill 343. Representative Redwine said that this section makes the 100-day noncharge that is currently only applicable to Work First applicants or employees referred from the ESC applicable to all employees. Under this noncharge provision, the employer is not charged for any benefits if an employee is hired and must be separated within the first 100 days of employment due to inability to do the work. He said that the impact to the trust fund would be minimal.

Mr. Whitaker, ESC, spoke in support of the provision.

Chairman Hackney said that two amendments were being drafted to give the Committee alternatives regarding family hardship. One amendment would add spouses and disabled children to the language. The other amendment would provide a broad category including a minor child or any disabled member of that individual's immediate family.

The amendment was not distributed, but Chairman Hackney read it to the Committee: "Undue family hardship" arises when an individual is unable to accept a particular shift because the individual is unable to obtain care during that shift for a minor child or any disabled member of that individual's immediate family.

Ms. Sitze noted that immediate family includes parents, even though they are not living in the household. She said that "immediate family" is subject to interpretation and that it might be better to list out the people who are to be included.

Discussion followed.

Chairman Hackney suggested that the language include child care for a minor under the age of 14, elder care for the aged or disabled parent, or any other disabled member of the individual's immediate family.

Representative Blue asked why the language should not include 15 or 16 year olds?

Chairman Hackney asked if the language "under the age of 14" should be removed and substitute "a minor child."

Representative Sutton suggested the words "immediate family" be changed to "immediate household."

Mr. Whitaker spoke against the "immediate household" language.

Representative Nesbitt moved to rewrite the language as follows: "undue family hardship arises when an individual is unable to accept a particular shift because the individual is unable to obtain 1. child care during that shift for a minor child in the legally recognized custody of the individual; 2. elder care

during that shift for an aged or disabled parent of the individual; 3. care for any disabled member of that individual's immediate family.

Representative Arnold stated a need to define "immediate family." He moved to change the language to "immediate household."

Representative Sutton asked if "immediate family" is defined elsewhere.

Mr. Whitaker said that it is defined in the state personnel manual.

Representative Sutton said that if "immediate family" is defined there, then this language could be drafted to match that definition.

Ms. Sitze stated that she would have to research the definition.

The meeting adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 13, 2001

AGENDA

HOUSE BILL 342– ESC RECORDS/EVIDENCE
REPRESENTATIVE DAVID REDWINE

HOUSE BILL 343 – REMOVE EMPLOYMENT SECURITY SUNSETS
REPRESENTATIVE REDWINE

HOUSE BILL 344 – DOMESTIC EMPLOYER WAGE REPORTS
REPRESENTATIVE REDWINE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 13, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Westbrook	United Transportation Union
Doris Weaver	N.C. CWA Political Council, 7004 Hickory Dr 27603
Tom Coley	NC CWA 3916 Kallorama Dr. Gso 27407
Tom Whitaker	ESC
Raymond Goodman	ESC
Bill Rowe	NC Justice Center
[illegible]	ESC
Drew Nelson	Rep. Hackney's Office
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
[illegible]	ESC
Don McCorquodale	SAS
Mike Obra	NC State AFL-CIO
Stephen Schmidt	NC Justice Center
[illegible]	OSP
Rob Schofield	NC Justice Ctr.
Margaret Westbrook	KCLH
Linda Blackburn	County Commissioners
Rudy Comeaux	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 342

Short Title: ESC Records/Evidence-AB. (Public)

Sponsors: Representative Redwine.

Referred to: Judiciary I.

March 1, 2001

A BILL TO BE ENTITLED

AN ACT RELATING TO THE ADMISSIBILITY, PHOTOGRAPHIC REPRODUCTION, AND RETENTION OF RECORDS OF THE EMPLOYMENT SECURITY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-45.3 reads as rewritten:

"**§ 8-45.3. Photographic reproduction of records of Department of ~~Revenue.~~ Revenue and Employment Security Commission.**

(a) The State Department of Revenue is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Department, including tax returns required by law to be made to the Department, and said photographs, photocopies, or microphotocopies, when certified by the Department as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings and matters as the originals thereof would have been.

(a1) The Employment Security Commission is hereby specifically authorized to have photographed, photocopied, or microphotocopied all records of the Commission, including filings required by law to be made to the Commission, and said photographs, photocopies, or microphotocopies, when certified by the Commission as true and correct photographs, photocopies, or microphotocopies, shall be as admissible in evidence in all actions, proceedings, and matters as the originals thereof would have been.

(b) The provisions ~~of subsection (a)~~ of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to

the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

SECTION 2. G.S. 132-3 is amended by adding a new subsection to read:

"(c) Employment Security Commission Records. – Notwithstanding subsection (a) of this section and G.S. 121-5, when a record of the Employment Security Commission has been copied in any manner, the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. If a record of the Commission has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Chairman of the Employment Security Commission."

SECTION 3. Section 1 of this act becomes effective December 1, 2001, and applies to all actions and proceedings pending in the courts of this State on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 342:
ESC Records/Evidence-AB

BILL ANALYSIS

Committee:	House Judiciary	**Introduced by:**	Representative Redwine
Date:	March 13, 2001	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would allow the Employment Security Commission (ESC), like the Department of Revenue, to photocopy ESC records and required filings, to use copies certified by the ESC as admissible evidence, and to destroy the original record upon order of the Chairman of the ESC either when a copy of the original has been made or after three years have passed.***

CURRENT LAW: Section 1. The following generally govern evidentiary requirements for writings, recordings or photographs and public and official records:

- Rules 1002 – 1005 of the Rules of Evidence (N.C.G.S. §8C-1, Rules 1001 –1005)
  - Generally requires an original writing, recording or photograph be offered to prove its contents but allows duplicates to be admitted unless the original's authenticity is challenged or it's unfair to admit the duplicate. Original is not required if it is: (1) lost or destroyed; (2) not obtainable by judicial process; (3) possessed by the opponent and not produced; or (4) not crucial to controlling issue.
  - Public records, if otherwise admissible, may be proved by a copy certified by the authentication rules of Rule 902 of the Rules of Evidence.
- Rule 44 of the N.C. Rules of Civil Procedure (N.C.G.S. §1A-1, Rule 44) provides for admissibility of a copy of an official record for any purpose if attested to and certified by custodian
- N.C.G.S. §8-34 provides certified copies of records filed or recorded with a public office with same evidentiary treatment as originals, unless the court orders the original produced.

There is currently no specific evidentiary rule for ESC public records.

Section 2. N.C.G.S. §121-5 allows a State agency to destroy or dispose of public records only upon when the Dept. of Cultural Resources certifies the records appear to have no further use or value for research or reference. No statute establishes how long ESC must keep its original records.

BILL ANALYSIS: Section 1. of the bill would clarify that the ESC may photocopy or otherwise reproduce all ESC records or filings required to be made with the ESC and that these copies or reproductions if certified by the ESC are admissible in all proceedings, without exception.

Section 2. of the bill would provide that, notwithstanding general rules on destruction of public records, the ESC can destroy or dispose of original records at the direction of the Chairman of the ESC when a copy or reproduction has been made or when three years have passed.

BACKGROUND: Copies of public records and official records such as those maintained by the ESC are generally admissible, but there are exceptions. The ESC is currently burdened with storing original quarterly filed reports going back to 1933. The ESC seeks to save storage but ensure that photocopies, if certified, are admissible, without exception.

EFFECTIVE DATE: Section 1. - Effective December 1, 2001, and applicable to actions and proceedings in N.C. courts on or after that date. Remainder effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 342 A BILL TO BE ENTITLED AN ACT RELATING TO THE ADMISSIBILITY, PHOTOGRAPHIC REPRODUCTION, AND RETENTION OF RECORDS OF THE EMPLOYMENT SECURITY 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 343

Short Title:	Remove Employment Security Sunsets-AB.	(Public)
Sponsors:	Representative Redwine.	
Referred to:	Judiciary I.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 1997-404 reads as rewritten:

"Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. ~~This act expires September 1, 2001.~~"

SECTION 2. Section 5 of S.L. 1999-196 reads as rewritten:

"Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date. ~~This act expires June 30, 2001.~~"

SECTION 3. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was ~~hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the~~

~~Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment;~~ hired; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship; or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 343
PROPOSED COMMITTEE SUBSTITUTE H343-PCS3184-LR-2

Short Title: Remove Employment Security Sunsets-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 1997-404 reads as rewritten:

"Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. ~~This act expires September 1, 2001.~~"

SECTION 2. Section 5 of S.L. 1999-196 reads as rewritten:

"Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date. ~~This act expires June 30, 2001.~~"

SECTION 3. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the ~~claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent~~

~~of the wages paid during such probationary employment;~~ claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship; ~~or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation;~~ provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 343:
Remove Employment Security Sunsets

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Redwine
Date:	March 13, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 343 removes the sunset provisions relating to the employment security laws and makes other amendments to the employment security laws.

BILL ANALYSIS: **Section 1** removes the September 1, 2001 sunset on the alternate base period created in 1997. The traditional base period for unemployment insurance claims is the first four of the last five calendar quarters. The alternate base period allows claimants who are monetarily ineligible to qualify for benefits if they have wages in the four most recently completed calendar quarters.

Section 2 removes the June 30, 2001 sunset on the shift restriction provision created in 1999. This provision allows a worker who is employed and who is forced to change shifts or quit work to qualify for benefits. This section only applies if the worker cannot work another shift because of childcare or elder care responsibilities.

Section 3 makes the 100-day noncharge that is currently only applicable to Work First applicants or employees referred from the Employment Security Commission applicable to all employees. This noncharge provision provides that if an employee is hired and must be separated within the first 100 days of employment due to inability to do the work, the employer is not charged for any benefits.

This act is effective when it becomes law.

HOUSE BILL 344:
Domestic Employer Wage Reports-AB

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Redwine
Date:	March 13, 2001	**Summary by:**	Rick Zechini
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 344 explicitly provides that only employers of domestic service employees may file wage reports annually.***

CURRENT LAW: G.S. 96-9(a)(8) provides that an employer who has filed wage reports for three consecutive years and who has not been liable for quarterly contributions during the preceding calendar year may receive permission from the Chair of the Employment Security Commission to file wage reports annually. An employer is not liable for quarterly contributions when the amount of the contributions due is less than five dollars ($5.00). The provision that allows the filing of wage reports annually generally applies only to employers of domestic service employees. Federal law, however, explicitly provides that only employers of domestic service employees that meet these requirements may file wage reports annually. The Employment Security Commission has requested this bill to conform North Carolina law to the federal law.

BILL ANALYSIS: House Bill 344 amends G.S. 96-9(a)(8) to limit the ability to file wage reports annually to employers of domestic service employees.

EFFECTIVE DATE: The bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 344

Short Title:	Domestic Employer Wage Reports-AB.	(Public)
Sponsors:	Representative Redwine.	
Referred to:	Judiciary I.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT RELATING TO THE ANNUAL FILING OF WAGE REPORTS BY DOMESTIC SERVICE EMPLOYERS UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9 (a)(8) reads as rewritten:

"(8) An employer <u>of domestic service employees as defined by the Internal Revenue Code</u> who has filed reports with the Commission for at least three consecutive years and has not been liable for quarterly contributions under subdivision (6) of this subsection during the preceding calendar year may be given permission by the Chair of the Commission to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. Permission to file a report annually may be revoked if the employer is found liable to the Commission for quarterly contributions under subdivision (6) of this subsection.

An employer who is granted permission to file annual reports must comply with 20 C.F.R. § 603.21 so that reporting of wages and employment status are as effective and timely as the quarterly wage reporting system. This compliance includes the reporting of all changes in employment status and in wages of an employee to the Commission within 14 days of the occurrence and responding to all inquiries from the Commission as to wages paid to an employee in a year in which the employer is reporting on an annual basis within 14 days of the postmark of the inquiry. If an employer does not report or respond to an inquiry within 14 days, then the Commission will estimate wages paid to an employee based on the last report the employer filed with the Commission, and the employer will be liable

for any charge based on the Commission's estimation of the wages paid to the employee."

SECTION 2. 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(s) **-Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 344 A BILL TO BE ENTITLED AN ACT RELATING TO THE ANNUAL FILING OF WAGE REPORTS BY DOMESTIC SERVICE EMPLOYERS UNDER THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

☒ 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 Judiciary I Committee

March 15, 2001
Minutes

The House Judiciary I Committee met on Thursday, March 15, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the subcommittee for House Bill 142 – AMEND MARRIAGE STATUTES – had not completed its work and that the bill would not be discussed during the meeting.

Representative Redwine was recognized to continue the discussion of House Bill 343, AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS. The bill was explained at the March 13, 2001 meeting of the Committee and a proposed committee substitute was adopted for the purpose of discussion during that meeting. In order to address questions posed by members during that meeting, a new committee substitute was offered by Representative Redwine, (Attachment III). Representative Arnold moved adoption of the new Proposed Committee Substitute for the purpose of discussion.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes in the new proposed committee substitute. She said that in the new language, the under 14 years of age requirement for a minor was deleted and replaced with any minor under the age of 18. New language was also added to make undue family hardship apply for any disabled member of that individual's family. She stated that a definition of "immediate family" was also added. She said that the effective date for Sections 3 and 4 was changed to become effective September 1, 2001 for notice purposes and the remainder of the bill is effective when it becomes law.

Mr. Thomas Whitaker, Employment Security Commission, was recognized and spoke in support of the committee substitute. He said that the ESC does not feel that the provisions will be costly and that they will carefully monitor the results.

There was brief committee discussion.

Representative Redwine moved that the committee substitute be given a favorable report and the original bill be given an unfavorable report. The motion carried, (Attachment IV).

Representative Redwine was recognized to continue discussion of House Bill 183, AN ACT TO ALLOW EMERGENCY SUPERIOR COURT JUDGES AND DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES. The bill was given a favorable report for a committee substitute on March 1,

2001, but was referred to the Committee. He offered a new proposed committee substitute, (Attachment V), and moved that it be adopted for the purpose of discussion. The motion carried.

Representative Redwine explained that the effective dates are narrowed in the new committee substitute.

Representative Alexander moved that committee substitute (#2) be given a favorable report and that committee substitute #1 be given an unfavorable report. The motion carried, (Attachment VI).

The meeting adjourned at 10:25 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MARCH 15, 2001

AGENDA

HOUSE BILL 142 – AMEND MARRIAGE STATUTES
REPRESENTATIVE RON SUTTON

HOUSE BILL 183 – MARRIAGE BY DISTRICT COURT JUDGE
REPRESENTATIVE DAVID REDWINE

HOUSE BILL 343 – REMOVE EMPLOYMENT SECURITY SUNSETS
REPRESENTATIVE REDWINE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 15, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Lamm	United Transportation Union
Richard Wisthook	JTU
Mike Okun	NC State AFL-CIO
[illegible]	AC-W
Matt Osborne	AOC
[illegible]	NCFPC
Charlene Strabay	NCASP
[illegible]	Rep Hackney's Office
Leslie Bedaga	NC CBI
Jim Minta	NC Home Builders Assn
Kevin McClees	McClees Consulting, Inc.
Tom Whitaker	ESC
Catherine Davis	Electricities
Leon M Killian	Moore Van Allen

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 343
PROPOSED COMMITTEE SUBSTITUTE H343-CSSA-3 [v.1]

3/14/2001 4:49:06 PM

Short Title: Remove Employment Security Sunsets.-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 1997-404 reads as rewritten:

"Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. ~~This act expires September 1, 2001.~~"

SECTION 2. Section 5 of S.L. 1999-196 reads as rewritten:

"Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date. ~~This act expires June 30, 2001.~~"

SECTION 3. G.S. 96-8(10a) reads as rewritten:

"(10a) 'Undue family hardship' arises when an individual is unable to accept a particular shift because the individual is unable to obtain (i) child care during that shift for a minor child ~~under 14 years of age~~ who is in the legally recognized custody of the ~~individual or~~ individual, (ii) elder care during that shift for an aged or disabled parent of the ~~individual.~~individual, or (iii) care for any disabled member of that individual's immediate family."

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(27) 'Immediate family' means an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship."

SECTION 5. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause

attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was ~~hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment;~~ hired; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship; or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

SECTION 6. Sections 3 and 4 of this act become effective September 1, 2001, and apply to unemployment insurance claims filed on or after that date. The remainder of 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(s) (Chair/Chairs) for the Committee on .

☐ Committee Substitute for
H.B. 343 A BILL TO BE ENTITLED AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

☐ 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 183
PROPOSED COMMITTEE SUBSTITUTE H183-CSSA-2 [v.1]

3/14/2001 2:36:43 PM

Short Title: Marriage by District Court Judge. (Public)

Sponsors:

Referred to:

February 21, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW EMERGENCY SUPERIOR COURT JUDGES AND DISTRICT COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, emergency superior court judge of this State, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, district court judge of this State, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this

Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 3. Section 1 of this act becomes effective April 13, 2001, and expires April 16, 2001. Section 2 of this act becomes effective June 1, 2001, and expires June 4, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
H.B. 183 A BILL TO BE ENTITLED AN ACT TO ALLOW DISTRICT COURT JUDGES AND EMERGENCY SUPERIOR COURT JUDGES TO PERFORM MARRIAGE CEREMONIES.

☐ 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 (# 2), ☒ which changes the title, unfavorable as to ~~(original bill)~~ (Committee Substitute Bill # 1), ~~(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 Judiciary I Committee

March 20, 2001

Minutes

The House Judiciary I Committee met on Tuesday, March 20, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. Representative Cunningham, Ex-officio member of the committee also attended. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The first bill to be considered was House Bill 343, AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS. This bill was explained and discussed during the March 13, 2001 meeting of the committee and a proposed committee substitute was adopted for discussion. On March 15, 2001 the committee considered a new proposed committee substitute that incorporated suggestions offered during the March 13 meeting.

A third proposed committee substitute, (Attachment III), was distributed and Representative Arnold moved that the committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the new committee substitute. Ms. Sitze told the committee that she had inadvertently left out some of the technical corrections in the committee substitute that the committee had adopted on March 15. Those changes had appeared in the March 13 version, but due to the installation of a new computer system, those changes had not been included in the March 15 version. She said that the version before the committee at this meeting combines the two versions that the committee had agreed to into one committee substitute.

Representative Arnold moved that the new version of the committee substitute be given a favorable report and that the original bill be given an unfavorable report. The motion carried, (Attachment IV).

Chairman Hackney said that House Bill 141, AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment V) was before the committee for its first hearing. He announced that the sponsor would explain the bill and that staff would offer additional comment, but that the members would not hear from persons outside of the committee during this meeting and that no vote would be taken.

Representative Sutton was recognized for the explanation. He said that the bill, recommended by the Legislative Research Commission, provides that a person that is mentally retarded cannot be

executed as a result of committing a capital crime. He said that the bill also states that there is no prohibition against that individual receiving other sentences consistent with North Carolina law. He defined "mentally retarded" as significantly sub average intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. Representative Sutton said that "significantly sub average intellectual functioning" is defined as having an intelligence quotient of 70 or below on an individually administered standardized IQ test. Representative Sutton stated this determination must be made prior to trial and that the burden is on the defendant, not the State, to demonstrate mental retardation by a preponderance of the evidence. He said that if the court determines that the person is mentally retarded in accordance with the criteria set forth in the bill, then the court shall declare the case to be non-capital, and the individual is not subject to the death penalty, but would not preclude the individual from being sentenced in accordance with other laws of the State of North Carolina, meaning the person could get life, without parole. Representative Sutton said that just because the court might make a determination that an individual is not eligible for the death penalty does not preclude the individual from raising other defenses before, during and throughout the trial.

Ms. Sitze was recognized to provide further explanation on the bill. A copy of the bill analysis prepared by Ms. Sitze is attached, (Attachment VI). She reviewed the definitions of "mentally retarded" and "significantly sub average intellectual functioning" and noted that both of these conditions must have been manifested before the age of eighteen. She noted that upon motion of a defendant prior to trial, the court **must** conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. She said that preponderance of the evidence is a different standard than that used in determination of guilt for the crime itself. The criminal standard is "beyond a reasonable doubt" and preponderance of the evidence is more of a "more likely than not" standard. Ms. Sitze said that if the defendant is determined to be mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant. She said that the determination of mental retardation does not prevent the defendant from claiming not guilty by reason of insanity or any other factor that might relate to their mental retardation separate from this hearing. Ms. Sitze said that the bill would allow for the sentencing of life in prison without parole. She noted that under North Carolina law, life in prisonment without parole does now truly mean life in prison, without parole.

Ms. Sitze reviewed current law regarding mentally retarded defendants. She said that under the sentencing statute for determination of the death penalty there are two mitigating factors which could apply to a mentally retarded person. Those circumstances are that: "the capital felony was committed while the defendant was under the influence of mental or emotional disturbance" or "the capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was impaired." She said that these two mitigating circumstances are not specifically geared toward mentally retarded individuals, but under current law, could apply to many of the mentally retarded individuals. She said that the difference between current law with the mitigating circumstances and what the bill does is that mitigating factors are simply factors that the jury **can** consider in determining whether or not a defendant should receive the death penalty.

Considerable discussion followed regarding IQ testing requirements and procedures.

Chairman Hackney provided the following statistics from the Study Commission Report:

- There are 38 states that have capital punishment. Thirteen of those states forbid, specifically, the execution of persons suffering from mental retardation.

- The death penalty statute does not permit someone who is under the age of seventeen to be sentenced to death in North Carolina.

Discussion continued regarding the constitutionality of placing the burden on the defendant, and whether the preponderance of the evidence standard had passed constitutional scrutiny in other states.

Ms. Sitze replied that she did not know of other states' case laws, but that it is not unconstitutional to place the burden for supporting a motion that is filed on the defendant. She said that the preponderance of the evidence is a standard that is used in some other pretrial motions in a criminal trial.

Chairman Hackney noted that the burden is on the defendant to show insanity and inquired of the standard for that. Ms. Sitze replied that the standard test for "not guilty by reason of insanity" is not a codified test, but rather a case law developed test, and generally means that the defendant did not understand, at the time that the crime was committed, the nature of the crime, or did not understand that the crime would have the effect it would have.

Chairman Hackney stated that if one fails to convince a judge that the case should be non-capital because the defendant is retarded, all the evidence may be put forward to the jury in the mitigation phase to try to take advantage of the mitigating factor in the statute.

Representative Sutton agreed, reminding the committee that this is a pretrial motion in which the judge must hear the motion once it is filed, and make a ruling. If the judge rules in the defendant's favor, the trial will go forward with no chance of the defendant receiving the death penalty. The defendant would be subject to all other provisions of the existing law. If the defendant fails to meet the standard, and the judge rules against the defendant, he is back to square one like any other defendant going forward in a trial.

Representative Blue asked if any study existed regarding the District Attorney's propensity to choose to go for non-capital first degree in these circumstances.

Representative Sutton replied that the district attorneys that he has spoken with do not like the bill and would rather have the discretion, themselves, to make the decision. He said that he was not aware of any such study, however.

Chairman Hackney noted that the staff would research this question.

Chairman Hackney asked for a show of hands from visitors who would like to be heard regarding the bill. There were 10-12 persons desiring to be heard. Chairman Hackney noted that he was trying to

make a determination as to whether a public hearing would be held, or if the committee would hear from interested parties during a committee meeting. He asked that those people interested in speaking give their names to Ms. Sitze, and noted that this would not preclude others who may not be present at this meeting from speaking.

The meeting adjourned at 10:55 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 20, 2001

AGENDA

HOUSE BILL 141 – NO DEATH PENALTY/MENTALLY RETARDED
REPRESENTATIVE RON SUTTON

HOUSE BILL 343 – REMOVE EMPLOYMENT SECURITY SUNSETS
REPRESENTATIVE DAVID REDWINE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 20, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Medlin	CCPS
Bill Kewerly	D.A. 19C - Conference of DAs
Peg Dorer	Conference of DAs
Colon Willoughby	DA - 10th Dist.
Sally Cameron	NC Psychological Assoc
Jennifer Sullivan	Nat'l Assoc. of Social Workers - NC
Andrew Short	NC Psychological Assoc.
Barry Howard Sutton	Concerned individual
M.D. Burnette	NACPD
BRUCE THOMPSON	PARKER, POE, ADAMS & BERNSTEIN
MARTHA GEER	PATTERSON, HARKAVY & LAWRENCE
Marlene Shabazz	DSP
David Richard	The Arc
Chris Fitzsimon	Common Sense Foundation
Gerda Stein	Raleigh
Ruth Cook	Raleigh
Lisa Robinson	Fiscal Research
Bill Rowe	NC Justice Center
Dolly Whiteside	AOC
Charles Cromer	NCATL
Dick Taylor	NCATL
BILL WILSON	NCATL
Rev. MARK A. YATES	NCVAN & CONCERNED CITIZEN
Mel L. CHILTON	NC VAN - Victim
Donna Pygott	NCVAN
Melissa Lewis	NCVAN

VISITOR REGISTRATION SHEET

JUDICIARY I — 3/20/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCBA
[signature]	AHA NC
Trevor Wells	none
Michelle Frazier	NC Bar Association
ALLAN NEAD	NC Bar Assoc
A. A. Adams	Victim Advocate
Mike Cox	NC State AFL-CIO
W P Pulley	NCCCS
Evelyn Hammond	UNC-CH

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 343
PROPOSED COMMITTEE SUBSTITUTE H343-PCS3222-SA-5

Short Title: Remove Employment Security Sunsets-AB. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 1997-404 reads as rewritten:

"Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. ~~This act expires September 1, 2001.~~"

SECTION 2. Section 5 of S.L. 1999-196 reads as rewritten:

"Section 5. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date. ~~This act expires June 30, 2001.~~"

SECTION 3. G.S. 96-8(10a) reads as rewritten:

"(10a) 'Undue family hardship' arises when an individual is unable to accept a particular shift because the individual is unable to obtain (i) child care during that shift for a minor child ~~under 14 years of age~~ who is in the legally recognized custody of the ~~individual or~~ individual, (ii) elder care during that shift for an aged or disabled parent of the ~~individual.~~individual, or (iii) care for any disabled member of that individual's immediate family."

SECTION 4. G.S. 96-8 is amended by adding a new subdivision to read:

"(27) 'Immediate family' means an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship."

SECTION 5. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set

forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the ~~claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment;~~ claimant's period of employment was 100 days or less; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family hardship; ~~or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation;~~ provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992,

where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

SECTION 6. Sections 3 and 4 of this act become effective September 1, 2001, and apply to unemployment insurance claims filed on or after that date. The remainder of 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 **Hackney** (Chair) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 343 A BILL TO BE ENTITLED AN ACT REMOVING SUNSET PROVISIONS RELATING TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND MAKING OTHER AMENDMENTS.

☐ 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 ☐ ☐.

X 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 141*

Short Title:	No Death Penalty/Mentally Retarded.	(Public)
Sponsors:	Representatives Sutton, Fitch, Luebke; Alexander, Barefoot, Blue, Bowie, Boyd-McIntyre, Earle, Goodwin, Hackney, Hall, Hensley, Hunter, Insko, Lucas, McAllister, Michaux, Miller, Oldham, Shubert, Wainwright, Weiss, Womble, and Yongue.	
Referred to:	Judiciary I.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. – An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

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

HOUSE BILL 141:
No Death Penalty/Mentally Retarded

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Sutton, Finch, Luebke
Date:	March 20, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 141 provides that a mentally retarded person convicted of first-degree murder shall not be sentenced to death.***

CURRENT LAW: Current law does not provide an exemption from the death penalty for mentally retarded persons. G.S. 15A-2000(f)(2) and (6) provide two mitigating circumstances which may be potentially applied to mentally retarded persons in considering whether a particular defendant should receive the death penalty. The current mitigating circumstances that may apply are that: "the capital felony was committed while the defendant was under the influence of mental or emotional disturbance" and/or "the capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was impaired".

BILL ANALYSIS: House Bill 141 would prohibit a mentally retarded person from receiving the death penalty for first-degree murder.

The bill defines "**mentally retarded**" as significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. "**Significantly subaverage intellectual functioning**" is defined in the bill as an intelligence quotient (IQ) of 70 or below on an individually administered standardized IQ test.

Under the provisions of the bill the defendant may make a motion prior to trial for a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

The bill becomes effective December 1, 2001 and applies to trials begun on or after that date.

BACKGROUND: This bill is a recommendation of the Legislative Research Commission.

House Judiciary I Committee

March 22, 2001

Minutes

The House Judiciary I Committee met on Thursday, March 22, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Richard Morgan was recognized for an explanation of House Bill 196, AN ACT TO EXEMPT THE RESTORATION OF THE FAIR BARN IN THE VILLAGE OF PINEHURST FROM THE PUBLIC BIDDING LAWS, (Attachment III). The bill would exempt the restoration of the Fair Barn in the Village of Pinehurst, which is a National Historic Landmark, from the public bidding laws. Representative Morgan noted that the Town of Pinehurst had unanimously requested the bill.

Ms. Susan Sitze, Committee Counsel, was recognized for comment. A copy of the bill analysis prepared by Ms. Sitze is attached, (Attachment IV). She said that the bill would exempt the Village of Pinehurst from all public bidding requirements. She said that state law requires that any state project, or local municipality or county project go through a public bidding process where bids are let out and anyone is essentially allowed to bid. The law requires that if a project is over $500,000, the individual parts of the project must be bid individually. The law allows for a single contract for a project under $500,000.

Representative Nesbitt reminded the committee that the bidding laws exist to allow an equal opportunity to compete for a project and to allow for the lowest responsible bidder.

Representative Morgan noted that a non-profit organization, The Pinehurst Fair Barn Preservation Nonprofit Corporation, had raised private funds to provide for the renovation of the building, but that the building and harness track is actually owned by the Village of Pinehurst who has allocated an additional $380,000 from their budget to begin this project.

Representative Arnold moved for a favorable report for House Bill 196. The motion carried, (Attachment V).

Representative Sutton was recognized for a subcommittee report and a continuation of the discussion of House Bill 142, AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE- OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT

APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION. The bill was discussed and two amendments were adopted during the February 27, 2001 meeting of the committee. The bill was again discussed and a proposed committee substitute was adopted for discussion on March 1, 2001. On March 6, 2001, the bill was discussed for a third time and was sent to a subcommittee for further study.

Representative Sutton offered a new proposed committee substitute, (Attachment VI) and moved that it be adopted for the purpose of discussion. The motion carried.

Representative Sutton reminded the committee that most of the members had been in agreement with a large portion of the bill, and that only a few areas had been contested.

Mr. Rick Zechini, Committee Counsel, was recognized to offer explanation of the areas of contention that had been discussed by the subcommittee. Mr. Zechini said that the new committee substitute restricts the consent, for a person who is 16 or 17 who wants to be married, to a parent who has full or joint legal custody. Another change ups the age for which a person may marry to fourteen years of age or older. The existing law is twelve. Mr. Zechini stated that with regard to judicial authorization provisions, a guardian ad litem would be appointed to represent the best interest of a person who is fourteen or fifteen. The language adds the guardian ad litem to the class of persons who may bring an action to annul a marriage if it is obtained through fraud or misrepresentation. With regard to persons who are fourteen and fifteen who desire to be married, judicial authorization must be obtained from the district court before a license can be issued. The court can only issue an order of authorization if it is in the best interest of the underage party, and the court finds that the party is capable of assuming the responsibilities of the marriage, and there also has to be a pregnancy or an actual birth as a result of the relationship. Mr. Zechini stated that if the parents object to the marriage, and no evidence is presented in favor of the marriage, the court shall not authorize the marriage.

Mr. Frank Folger, Committee Counsel, was recognized for further comment regarding judicial authorization for underage parties who seek to marry and discussion regarding the guardian ad litem provisions.

Representative Redwine asked if the bill allows the Register of Deeds to require both parties to appear.

Representative Sutton replied that the bill does not allow the Register of Deeds to require them to appear, but gives the Register of Deeds the option to not issue a license if not satisfied with the data they receive either in person or by affidavit.

Mr. Chip Killian, representing the Registers of Deeds, said that the Registers of Deeds are satisfied with this language.

Discussion followed regarding the recognition of marriages that are licensed and solemnized pursuant to the law of a federally recognized Indian tribe or nation.

Representative Sutton offered a technical amendment regarding the effective date of the legislation, (Attachment VII), and moved its adoption. The amendment was adopted.

Chairman Hackney noted that the committee would authorize the staff to make corrections to the typographical errors that were pointed out during discussion.

Representative Sutton called the committee's attention to another minor change that was made in the committee substitute on page 7, lines 10 and 11 regarding the county of issuance. Previously this had been referred to as the "county of marriage." This was done at the request of the Registers of Deeds because the license can now be issued in one county while the marriage ceremony takes place in another.

At the request of the Registers of Deeds, Representative Sutton offered an oral amendment to add the words "or assistant" to the words "a lawful deputy" on line 34 of page 5.

Chairman Hackney authorized the staff to add the language.

Representative Sutton moved a favorable report for a committee substitute incorporating all the amendments and an unfavorable report for the original bill and prior committee substitutes.

The motion carried, (Attachment VIII).

The meeting adjourned at 10:55 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MARCH 22, 2001

AGENDA

HOUSE BILL 142 – AMEND MARRIAGE STATUTES
REPRESENTATIVE RON SUTTON

HOUSE BILL196– BID LAW FLEX./ PINEHURST HISTORIC PRESERVATION
REPRESENTATIVE RICHARD MORGAN

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — **March 20, 2001**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Kilbane III	Moore Van Allen
Paula H. Hoppe	Moore Van Allen
Matt Osborne	AOC
[illegible]	[illegible]
John Rustin	NCFPC
Carl Cahoon	NCAC
Rob Schofield	NCJCDC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 196

Short Title:	Bid Law Flex./Pinehurst Historic Preservation.	(Local)
Sponsors:	Representative Morgan (By Request).	
Referred to:	Judiciary I.	

February 21, 2001

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE RESTORATION OF THE FAIR BARN IN THE VILLAGE OF PINEHURST FROM THE PUBLIC BIDDING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The provisions of Article 8 of Chapter 143 of the General Statutes do not apply to the Fair Barn Restoration Project in the Village of Pinehurst.

SECTION 2. This act applies only to the Village of Pinehurst.

SECTION 3. This act is effective when it becomes law and expires January 1, 2006.

HOUSE BILL 196:
Bid Law Flex./Pinehurst Historic Preservation

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Morgan
Date:	March 22, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 196 exempts the restoration of the Fair Barn in the Village of Pinehurst from the public bidding laws.

CURRENT LAW: State law requires any contract for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body to be put out for public bidding. If the project is over $500,000, the separate portions of the work must be contracted separately (heating & air, electrical, construction, etc.). If the project is less than $500,000, a single contract may cover all work to be done.

BILL ANALYSIS: House Bill 196 exempts the restoration of the Fair Barn in the Village of Pinehurst from the public bidding laws until January 1, 2006.

BACKGROUND: The Fair Barn is a National Historic Landmark located in the Village of Pinehurst. The exterior of the building was renovated in the late 90's. This exemption is requested for the renovation of the interior of the building. Municipal money will account for approximately 25% of the total restoration project. The remainder of the money has been raised by the Pinehurst Historic Preservation Foundation, a 501(c)(3) organization.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **HACKNEY** (Chair) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 196 A BILL TO BE ENTITLED AN ACT TO EXEMPT THE RESTORATION OF THE FAIR BARN IN THE VILLAGE OF PINEHURST FROM THE PUBLIC BIDDING 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 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 142*
PROPOSED COMMITTEE SUBSTITUTE H142-CSSA-1 [v.23]

3/22/2001 9:06:19 AM

Short Title: Amend Marriage Statutes. (Public)

Sponsors:

Referred to:

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES; TO VALIDATE A MARRIAGE LICENSED AND SOLEMNIZED BY A FEDERALLY RECOGNIZED INDIAN TRIBE OR NATION; TO REQUIRE JUDICIAL AUTHORIZATION BEFORE A FOURTEEN- OR FIFTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO PROHIBIT MARRIAGE BY ANYONE UNDER FOURTEEN YEAR OF AGE; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

A valid and sufficient marriage is created by the ~~The~~ consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, ~~and~~ either:

(1) a. in the presence of an ordained minister of any religious denomination, a minister authorized by ~~his~~ a church, or ~~of a magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife,~~ a magistrate; and

b. ~~and~~ with the consequent declaration by ~~such~~ the minister or ~~officer~~ magistrate that ~~such~~ the persons are husband and ~~wife,~~ wife; or

(2) in accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

~~shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 2. G.S. 51-2 reads as rewritten:

"**§ 51-2. Capacity to marry.**

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden.

(a1) ~~In addition, persons~~ Persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for ~~such~~ the marriage, only after there shall have been filed with the register of deeds a written consent to ~~such~~ the marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

(3) By ~~either the mother or father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ a parent having full or joint legal custody of the underage party; or

(4) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of ~~such male or female child applying to marry.~~ the underage party.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) Persons over 14 years of age and under 16 years of age may marry as provided in G.S. 51-2A.

~~When an unmarried female who is more than 12 years old, but less than 18 years old, is pregnant or has given birth to a child and such unmarried female and the putative father of the child, either born or unborn, shall agree to marry, and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2), (3) or (4) above, or by the director of social services of the county of residence of either party, is given on the part of the female, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.~~

(b1) It shall be unlawful for any person under 14 years of age to marry.

(c) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a ~~parent or person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ parent of the underage party, a person, agency, or institution having legal custody or serving as a guardian of the underage party, or a guardian ad litem appointed to represent the underage party pursuant to G.S. 51-2A(b) is a proper party to bring an action to annul ~~said~~ the marriage."

SECTION 3. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"**§ 51-2A. Marriage of certain underage parties.**

(a) If an unmarried female who is more than 14 years of age, but less than 16 years of age, is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or if an unmarried male who is more than 14 years of age, but less than 16 years of age, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, the register of deeds is authorized to issue to the parties a license to marry; and it shall be lawful for them to marry in accordance with the provisions of this Chapter, only after a certified copy of an order issued by a district court authorizing the marriage is filed with the register of deeds. A district court judge may issue an order authorizing a marriage under this section only upon finding as fact and concluding as a matter of law that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve the best interest of the underage party. In determining whether the marriage will serve the best interest of an underage party the district court shall consider the following:

(1) The opinion of the parents of the underage party as to whether the marriage serves the best interest of the underage party.

(2) The opinion of any person, agency, or institution having legal custody or serving as a guardian of the underage party as to whether the marriage serves the best interest of the underage party.

(3) The opinion of the guardian ad litem appointed to represent the best interest of the underage party pursuant to G.S. 51-2A(b) as to whether the marriage serves the best interest of the underage party.

(4) The relationship between the underage party and the parents of the underage party, as well as the relationship between the underage party and any person having legal custody or serving as a guardian of the underage party.

(5) Any evidence that it would find useful in making its determination.

There shall be a rebuttable presumption that the marriage will not serve the best interest of the underage party when all living parents of the underage party oppose the marriage. The fact that the female is pregnant, or has given birth to a child, alone does not establish that the best interest of the underage party will be served by the marriage.

(b) An underage party seeking an order granting judicial authorization to marry pursuant to this section shall file a civil action in the district court requesting judicial authorization to marry. The clerk shall collect court costs from the underage party in the amount set forth in G.S. 7A-305 for civil actions in district court. Upon the filing of the complaint, summons shall be issued in accordance with G.S. 1A-1, Rule 4, and the underage party shall be appointed a guardian ad litem in accordance with the provisions of G.S. 1A-1, Rule 17. The guardian ad litem appointed shall be an attorney and shall be governed by the provisions of subsection (d) of this section. The underage party shall serve a copy of the summons and complaint, in accordance with G.S. 1A-1, Rule 4, on the father of the underage party; the mother of the underage party; and any person, agency or institution having legal custody or serving as a guardian of the underage party. The underage party also shall serve a copy of the complaint, either in accordance with G.S. 1A-1, Rule 4, or G.S. 1A-1, Rule 5, on the guardian ad litem appointed pursuant to this section. A party responding to the underage party's complaint shall serve his response within 30 days after service of the summons and complaint upon that person. The underage party may participate in the proceedings before the court on his or her own behalf. At the hearing conducted pursuant to this section, the court shall consider evidence, as provided in subsection (b) of this section and shall make written findings of fact and conclusions of law.

(c) Any party to a proceeding under this section may be represented by counsel, but no party is entitled to appointed counsel, except as provided in this section.

(d) The guardian ad litem appointed pursuant to subsection (b) of this section shall represent the best interest of the underage party in all proceedings under this section and also has standing to institute an action under G.S. 51-2(c). The appointment shall terminate when the last judicial ruling rendering the authorization granted or denied is entered. Payment of the guardian ad litem shall be governed by subsections (a) and (c) of G.S. 7B-603. The guardian ad litem shall make an investigation to determine the facts, the needs of the underage party, the available resources within the family and community to meet those needs, the impact of the marriage on the underage party, and the ability of the underage party to assume the responsibilities of marriage; facilitate, when appropriate, the settlement of disputed issues; offer evidence and examine witnesses at the hearing; and protect and promote the best interest of the underage party. In fulfilling the guardian ad litem's duties, the guardian ad litem shall assess and consider the emotional development, maturity, intellect, and understanding of the underage party. The guardian ad litem has the authority to obtain any information or reports, whether or not confidential, that the guardian ad litem deems relevant to the case. No privilege other than attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law.

(e) If the last judicial ruling in this proceeding denies the underage party judicial authorization to marry, the underage party shall not seek the authorization of any court

again under this section until after one year from the date of the entry of the last judicial ruling rendering the authorization denied.

(f) Except as otherwise provided in this section, the rules of evidence in civil cases shall apply to proceedings under this section. All hearings pursuant to this section shall be recorded by stenographic notes or by electronic or mechanical means. Notwithstanding any other provision of law, no appeal of right lies from an order or judgment entered pursuant to this section.

SECTION 4. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"**§ 51-2B. Parent includes adoptive parent**

As used in this Article, the terms "parent", "father" or "mother" includes one who has become a parent, father, or mother, respectively, by adoption.

SECTION 5. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"**§ 51-3.2. Marriage licensed and solemnized by a federally recognized Indian Nation or Tribe.**

(a) Subject to the restriction provided in subsection (b), a marriage between a man and a woman licensed and solemnized according to the law of a federally recognized Indian Nation or Tribe shall be valid and the parties to the marriage shall be lawfully married so long as the capacity requirements set out in Article 1 of Chapter 51 are met.

(b) When the law of a federally recognized Indian Nation or Tribe allows persons to obtain a marriage license from the register of deeds and the parties to a marriage do so, Chapter 51 of the General Statutes shall apply and the marriage shall be valid only if the issuance of the license and the solemnization of the marriage is conducted in compliance with this Chapter."

SECTION 6. G.S. 51-6 reads as rewritten:

"**§ 51-6. Solemnization without license unlawful.**

No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, shall perform a ceremony of marriage between a man and woman, or shall declare them to be husband and wife, until there is delivered to ~~him~~ that person a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage ~~is intended to take place~~ license was issued or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage ceremony.

Whenever a man and woman have been lawfully married in accordance with the laws of the state in which the marriage ceremony took place, and said marriage was performed by a ~~justice of the peace~~ magistrate or some other civil official duly authorized to perform such ceremony, and the parties thereafter wish to confirm their marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in a ceremony recognized by any religious denomination, federally or State recognized Indian Nation or Tribe, nothing herein shall be deemed to prohibit such confirmation ceremony; provided, however, that such confirmation ceremony shall not be deemed in

law to be a marriage ceremony, such confirmation ceremony shall in no way affect the validity or invalidity of the prior marriage ceremony performed by a civil official, no license for such confirmation ceremony shall be issued by a register of deeds, and no record of such confirmation ceremony may be kept by a register of deeds."

SECTION 7. G.S. 51-7 reads as rewritten:

"**§ 51-7. Penalty for solemnizing without license.**

Every ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, who marries any couple without a license being first delivered to ~~him,~~ that person, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within 10 days after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars ($200.00) to any person who sues therefore, and ~~he~~ shall also be guilty of a Class 1 misdemeanor."

SECTION 8. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons ~~if it appears that such persons~~ who are able to answer the questions regarding age, marital status, and intention to marry, and, based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

SECTION 9. Chapter 51 of the General Statutes is amended by adding the following new section:

"**§ 51-8.2. Issuance of marriage license when applicant is unable to appear.**

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds' office, the other party to the planned marriage must appear in person on behalf of the applicant and submit a sworn and notarized affidavit in lieu of the absent applicant's personal appearance

The affidavit shall be in the following or some equivalent form:

_____, (Applicant) appearing before the undersigned notary and being duly sworn, says that:

1. I, _____, [applicant's name] am applying for a license in _____ County, NC to marry _____ [name of other applicant] in North Carolina within the next 60 days and I am authorized under G.S. 51-8.2 to complete this Affidavit in Lieu of Personal Appearance for Marriage License Application.

I attach: (1) documentation that I am over 18 years of age as required in county of issuance; and (2) documentation of divorce as required by county of issuance.

2. I submit the following information in applying for a marriage license:

Name: _____

First Middle Last

Residence: _____

State County City or Town

_____

Street and Number Inside City Limits (Yes or No)

Birthplace: _____ Birth Date _____ Age: _____

County & State or Country

Father: _____

Name State of Birth Address (if living) or Deceased

Mother: _____

Name State of Birth Address (if living) or Deceased

Race (Optional): _____ Number of this marriage: _____

1st, 2nd, etc.

Last Marriage Ended by: _____ Date Marriage Ended: _____

Death, Divorce, Annulment

Specify Highest Grade Completed in School (Optional):

Social Security # _____ (If applicant does not have Social Security number, attach affidavit of ineligibility)

I hereby make application to the Register of Deeds for a Marriage License and solemnly swear that all of the statements contained in the above application are true and I further make oath that there is no legal impediment to such marriage.

_____ Signature of Applicant

Sworn to (or affirmed) and subscribed before me this _____ day of _____, _____.

_____

[Seal] Notary Public

_____ My commission expires:_____

[Notary's typed or printed name]"

SECTION 10. G.S. 51-15 reads as rewritten:

"**§ 51-15. Obtaining license by false representation misdemeanor.**

If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class ~~3~~1 misdemeanor. "

SECTION 11. G.S. 51-16 reads as rewritten:

"**§ 51-16. Form of license.**

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by ~~his~~ a church, ~~or to~~ any ~~magistrate for _____ County:~~ magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged _____ years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county.~~State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this _____ day of_____, _____

_____ L.M.

Register of Deeds of _____ County

Every register of deeds ~~shall~~ shall, at the request of an applicant, designate in ~~every~~ a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white,"~~"colored, or "Indian,"~~ "black,""African American,""American Indian,""Alaska Native,""Asian Indian,""Chinese,""Filipino,""Japanese,""Korean,""Vietnamese,""Other Asian,""Native Hawaiian,""Guamarian,""Chamorro,""Samoan,""Other Pacific Islander,""Mexican,""Mexican American,""Chicano,""Puerto Rican,""Cuban,""Other Spanish/Hispanic/Latino,"or"other,"as the case may be. The certificate shall be filled up and signed by the ~~minister or officer~~ minister, officer, or other authorized individual

celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the _____ day of _____, _____, at the house of P.R., in (here name the town, if any, the township and county), according to law.

_____N.O.

Witness present at the marriage:

S.T., of (here give residence)."

SECTION 12. G.S. 51-18.1 reads as rewritten:

"**§ 51-18.1. Correction of errors ~~in names~~ in application or license; amendment of names in application or license.**

(a) When it shall appear to the register of deeds of any county in this State that ~~the names of either or both parties to a marriage~~ information is incorrectly stated on an application for a marriage license, or upon a marriage license issued thereunder, or upon a return or certificate of an officiating officer, the register of deeds is authorized to correct such record or records ~~to show the true name and names of the parties to the marriage~~ upon being furnished with an affidavit signed by one or both of the applicants for the marriage license, accompanied by affidavits of at least two other persons who know the ~~true name or names of the person or persons seeking such correction.~~ correct information.

(b) When the name of a party to a marriage has been changed by court order as a result of a legitimation action or other cause of action, and the party whose name is changed ~~present~~ presents a signed affidavit to the register of deeds indicating the name change and requesting that the application for a marriage license, the marriage license, and the marriage certificate of the officiating officer be amended by substituting the changed name for the original name, the register of deeds may amend the records as requested by the party, provided the other party named in the records consents to the amendment."

SECTION 13. G.S. 7B-200 reads as rewritten:

"**§ 7B-200. Jurisdiction.**

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter;

(2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be rendered;

(3) Proceedings to determine whether a juvenile should be emancipated;
(4) Proceedings to terminate parental rights;
(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services;
(6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7B-302; and
(7) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.
(8) Proceedings by an underage party seeking judicial authorization to marry, pursuant to Article 1 of Chapter 51 of the General Statutes.

(b) The court shall have jurisdiction over the parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as provided by G.S. 7B-904, provided the parent or guardian has been properly served with summons pursuant to G.S. 7B-406. "

SECTION 14. G.S. 130A-110 reads as rewritten:

"**§ 130A-110. Registration of marriage certificates.**

(a) On or before the fifteenth day of the month, the register of deeds shall transmit to the State Registrar a record of each marriage ceremony performed in the county during the preceding calendar month. The State Registrar shall prescribe a form containing the information required by ~~G.S. 50-16~~ G.S. 51-16 and additional information to conform with the requirements of the federal agency responsible for national vital statistics. The form shall be the official form of a marriage license, certificate of marriage and application for marriage license.

(b) Each form signed and issued by the register of deeds, assistant register of deeds or deputy register of deeds shall constitute an original or a duplicate original. Upon request, the State Registrar shall furnish a true copy of the marriage registration. The copy shall have the same evidentiary value as the original.

(c) The register of deeds shall provide copies or abstracts of marriage certificates to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(d) Marriage certificates maintained by the local register of deeds shall be open to inspection and examination. "

SECTION 15. The Administrative Office of the Courts shall develop any and all forms necessary for carrying out the purpose of this act and distribute them to the Office of the Clerk of Superior Court in each county.

SECTION 16. Sections 4 and 7 of this act become effective October 1, 2001, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASO-8 [v.1]

Date _____,2001

Comm. Sub. [YES]
Amends Title [NO]
H142-CSSA-1

Representative

moves to amend the bill on page 10, line 38, by rewriting the line to read:
"**SECTION 16.** Sections 7 and 10 of this act become effective October 1," .

SIGNED _____
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(s) **HACKNEY** (Chair) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 142 A BILL TO BE ENTITLED AN ACT AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE-OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH 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 ~~(#1)~~, ☒ 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)

House Judiciary I Committee

March 27, 2001

Minutes

The House Judiciary I Committee met on Tuesday, March 27, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Clary, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the Committee would hear explanations of House Bill 383 and House Bill 643, and that there would be opportunity for public input, but that no vote would be taken during this meeting. He then asked that Representative Dan Blue, Vice Chairman, preside during the presentation of House Bill 643.

Vice Chair Blue recognized Representative Hackney for an explanation of House Bill 643, AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS, (Attachment III). Representative Hackney stated that the bill was introduced as a result of a situation in his district where there was an attempt to obtain testimony in the form of evidence from a domestic violence shelter. He said that the central premise of the bill is that there should be a safe place for a victim of domestic violence, rape or sexual assault to go to seek counseling, help and assistance without the fear that their segments will later be subject to being used in court. The bill establishes a qualified privilege for this communication. Representative Hackney noted that qualified privilege currently exists for physician/patient, psychologist/patient, family therapist/client and others.

Ms. Susan Sitze, Committee Counsel, was recognized to give further explanation of the bill. She distributed a bill analysis, (Attachment IV), and presented a more detailed explanation of the bill. Ms. Sitze stated that the privilege applies to any oral or written communication, information, or materials that were either made by, for, or about the victim to the domestic violence program or rape crisis center, or made, given to, or prepared by or for any agent, employee, or volunteer of one of those programs. She said that the information could not be released without the consent of the victim unless a court procedure is followed. The court procedure requires the party seeking disclosure to file a written motion with the court. The hearing and review process is outlined in the bill analysis.

Following committee discussion and questions, members of the audience were given an opportunity for comment.

Ms. Deborah Ross, American Civil Liberties Union of North Carolina, stated that the ACLU had no objection to creating a qualified privilege for victims of domestic violence who are seeking counseling and assistance, but that they did have concerns regarding the broadness of some parts of the legislation. She

said that under the provisions of the bill, the privilege would not only cover conversations with counselors, but would cover conversations with anyone employed or associated with a center. She also noted the lack of a requirement for persons who engage in the counseling and enjoy the privilege to be licensed or screened in any way. She said that all existing privileges in North Carolina law require some type of licensing or professional certification, and with that professional certification generally goes obligation of confidentiality. She said that unlicensed employees do not have those professional obligations of confidentiality overseen by a licensing board.

Ms. Anne Winner, North Carolina Coalition Against Domestic Violence, spoke in support of the bill. She said that the bill would establish a safe place for victims of domestic violence and would help encourage people to participate in the prosecution of these crimes. She said that without some degree of safety people would not feel comfortable to go forward and prosecute. She acknowledged that the privilege set forth in the legislation is of a different standard, but that there are existing standards that are differ from the standard privileges in the general statutes such as a police peer counseling statute established in 1999. She said that there is also an absolute privilege in the statutes for marriage and family counselors in certain instances.

Assuming the chair, Representative Hackney recognized Representative Nesbitt to explain House Bill 383- AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment V). Representative Nesbitt provided brief background for the bill that resulted from the LRC Study Committee on State Tort Liability. That background information may be found in the bill analysis prepared by Mr. Frank Folger, Committee Counsel, (Attachment VI). Representative Nesbitt stated that the extent to which local government may be liable is subject to limits set by the General Assembly, and they are immune except to the extent that they purchase insurance. Representative Nesbitt commented on current law. He said that some cities have five million dollars in coverage, and some have none. Most local governments belong to a liability pool that has a limit of two million dollars. He said that some larger cities have self-funded insurance plans. Further explanation the current law is found in the bill analysis.

Representative Nesbitt stated that the bill would do two things. If a local government chooses to self-insure, they must waive liability for the limits they are willing to pay. These limits would be set by resolution. The bill would also clarify that purchase of insurance by a local government waives its governmental immunity from the first dollar of damages up to the extent of insurance coverage.

Mr. Folger was recognized and spoke briefly on the bill. A proposed committee substitute was distributed, (Attachment VII). The committee substitute made a technical change in Section 3 in referencing 1987 Session Laws.

Mr. Jim Blackburn, North Carolina County Commissioners' Association, was recognized to comment on the bill. Mr. Blackburn expressed concern regarding costs involved and some of the technical aspects of the bill.

Mr. Andrew Romanet, North Carolina League of Municipalities, said that the league feels that it is time to look at some form of local government tort claims act.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, spoke in support of the bill.

Chairman Hackney recognized former Representative Bruce Ethridge, who was attending the meeting.

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 27, 2001

AGENDA

HOUSE BILL 383 – LOCAL GOVERNMENT TORT LIABILITY
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 643– TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS
REPRESENTATIVE JOE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 27, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilson	NCMBA
Jim Blackburn	NC Association of County Commissioners
Patrice Roesler	" " " "
Peg Dorer	NC Conference of DAs
Jennifer Gilliland	NC - Nat'l Assoc. of Social Workers
Martha Geer	Pattison, Hackney & Lamena, LLP
[illegible] Ross	ACLU
Steve Hoffman	NCSBA
J. B. McCants	AOC
Anne Dinner	NCCADV
Brian Francis	Meck Cnty
Ron Toppin	Beaufort County Rep. Pasta Workers NC
A-A- Adams	Victim Advocate
Katherine Jarvis	Electric Cities
Alice Garland	"
Monika Johnson Hostler	NCCASA
David Anders	PI-F-PIC
David Brewer	Regnery Services CCO
Jay Millard	CCPS
Frank Kilbride	Moore & Van Allen
Paula Hopper	Moore Van Allen
Ed Cashion	Parker, Poe, Adams & Bernstein
Phillip Woodhouse	NBC-17
Kevin Howell	Gov's Office
Bruce Thomson	Parker Poe Adams & Bernstein
Boyd Combes	City of Charlotte
David Ferrell	Hafer, Caldwell & Ferrell PA
BRUCE ETHRIDGE	BEAUFORT, N.C.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 643

Short Title:	Testimonial Privilege for Violence Victims.	(Public)
Sponsors:	Representatives Hackney; Alexander, Insko, Jarrell, Jeffus, McLawhorn, Underhill, Warren, and Weiss.	
Referred to:	Judiciary I.	

March 15, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.12. Communications with sexual assault counselors, rape crisis centers, and domestic violence programs privileged.**

(a) Definitions. – The following definitions apply in this section:

(1) Center. – A domestic violence program or rape crisis center.

(2) Domestic violence program. – A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims that include, but are not limited to, crisis hotlines; safe homes or shelters; children of violence services; community education; counseling systems, intervention and interface; transportation and referral; and victim assistance.

(3) Domestic violence victim. – A person who consults or has consulted any employee, agent, or volunteer of a domestic violence program for the purpose of securing advice, counseling, or other assistance as a result of mental, emotional, or physical injuries suffered as a result of domestic violence as defined by G.S. 50B-1. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(4) Rape crisis center. – Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other assistance to victims of sexual assault and their families.

(5) Sexual assault victim. – A person who consults or has consulted any employee, agent, or volunteer of a rape crisis center for the purpose of securing advice, counseling, or other assistance as a result of injuries suffered from sexual assault as defined by G.S. 14-27.2, G.S. 14-27.3, G.S. 14–27.4, G.S. 14–27.5, G.S. 14–27.7, and G.S. 14–27.7A. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(6) Victim. – A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. – A victim has an absolute privilege not to disclose, and to prevent any other person from disclosing, oral or written communications, information, or materials (i) made by, for, or about the victim or (ii) made, given to, or prepared by or for any agent, employee, or volunteer of a center.

(c) No Disclosure Without Victim's Consent. – Without the express written consent of the victim, no agent, employee, or volunteer of a center may disclose, divulge, produce, or testify concerning any communication or information, or records thereof, disclosed by any victim to them or to the center. Nothing disclosed in violation of this subsection shall be admissible as evidence in any judicial or quasi-judicial proceeding, including, but not limited to, civil, criminal, and juvenile proceedings. No agent, employee, or volunteer of a center may be examined in any proceeding as to any communication made or information disclosed by a victim, and no subpoena requiring their testimony concerning privileged information or any record thereof, may be issued or granted in any proceeding except as provided by subsection (e) of this section.

(d) The consent of a victim as to the direct examination of any agent, employee, or volunteer counselor of a center regarding communications made by the victim to that witness, or the offer at trial with the consent of the victim of any other evidence of any communication by or on behalf of the victim to a center or its agent, employee, or volunteer, shall be deemed consent for the cross-examination of the employee or volunteer, or the introduction of any other parts of the records of the center with respect to such communication, by the adverse party to the proceeding.

(e) Initial Court Review. – The privilege provided in this section may be superseded only by written judicial order of a district or superior court judge entered after compliance with the requirements of this section. The party seeking the information must file a written motion specifying the documents or testimony requested, and a copy of the motion and all supporting documents and briefs must be served on the victim and the center. The court must conduct a hearing at which the court has afforded the victim and the rape crisis center or domestic violence program and the applicant reasonable opportunity to be heard. At the hearing, the party seeking to obtain access to a communication or the production of documents otherwise made privileged by this

section must establish each of the following by clear and convincing evidence a good faith, specific, and reasonable basis for believing:

(1) The records or testimony sought are likely to contain specific, clearly identified information relevant and material to the factual issues to be determined in the civil proceeding, or exculpatory evidence which is relevant and material to the issue of the defendant's guilt in a criminal proceeding, and are not sought merely for impeachment purposes. This provision shall not be used to provide for general discovery, or for the purpose of determining whether any nonspecified information exists therein.

(2) The specific, clearly identified information is not otherwise available to the party seeking to offer the privileged evidence, or to obtain the order to compel production.

(3) The evidence sought is not merely cumulative of other evidence or information available or already obtained by the party or the party's counsel.

(f) Motion for Production or Subpoena to Be Denied. – Upon the failure of any applicant to establish the circumstances and basis required by subsection (e) of this section, the motion for production or other request shall be denied.

(g) In Camera Inspection. – In the event the court finds the circumstances and basis required in subsection (d) of this section have been established, the court shall require production, under seal, of the records or testimony sought and the records shall be received and reviewed by the court in camera. The court may not order disclosure unless it determines by clear and convincing evidence after in camera inspection that:

(1) The records or testimony contain information not otherwise available to the applicant;

(2) The information is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material, and exculpatory upon the issue of guilt in a criminal proceeding, and is not sought solely for impeachment purposes; and,

(3) Disclosure of all or a portion of the information sought is essential to the proper administration of justice.

(h) Limited Disclosure. – The court may order disclosure of only such portions of the records or communications sought as are relevant and material to the factual issues in a civil case, or as are directly material and exculpatory on the ultimate issue of guilt in a criminal case, or of adjudication in a juvenile case.

(i) Copies Furnished to Counsel, Prosecutor. – Copies of records or testimony ordered disclosed under this section to counsel for an accused in a criminal case shall also be furnished to the prosecutor. Materials ordered disclosed in any matter shall be furnished to counsel for all parties appearing. No person receiving the material shall use or disclose any information contained therein except in the prosecution or the proceeding on which the order was based.

(j) Duty of Center to Assert Privilege. – Absent written consent to disclosure from the person or persons to whom the records or communications pertain, any person,

center, or agency that has or is alleged to have possession of records privileged under this section, shall have a duty not to disclose privileged materials or communications, and the person, center, or agency, or any guardian or conservator of a victim who is a minor or otherwise incapacitated, shall assert the privilege provided herein for and on behalf of persons to whom any records sought pertain. No person, center, or agency shall produce or divulge the contents of any privileged record until a final judicial order is entered directing the production or disclosure as provided in subsections (g) and (h) of this section. Any person, center, or agency producing records pursuant to a final judicial order shall be immune from any claim related to or alleging their improper production.

(k) Duty to Report Abuse or Neglect. – Nothing in the section shall be construed to relieve any person of any duty pertaining to reporting abuse or neglect as required by law."

SECTION 2. This act becomes effective December 1, 2001, and applies to all actions and proceedings pending in the courts of this State on or after that date.

HOUSE BILL 643:
Testimonial Privilege for Violence Victims

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	March 27, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 643 establishes a qualified testimonial privilege for communications with sexual assault counselors, rape crisis centers, and domestic violence programs.***

CURRENT LAW: There are several qualified privileges in the current law. Some examples are: Physician/Patient, Clergyman/Communicant, Psychologist/Patient, and Marital or Family Therapist/Client. Most other qualified privileges allow the requested information to be released if the presiding judge finds that the disclosure is "necessary to a proper administration of justice".

BILL ANALYSIS: House Bill 643 creates a new section G.S. 8-53.12 entitled "Communications with sexual assault counselors, rape crisis centers, and domestic violence programs privileged."

Definitions: The privilege would apply to "domestic violence victims" who seek advice, counseling or other assistance as a result of "mental, emotional, or physical injuries suffered as a result of domestic violence as defined by G.S. 50B-1 (attached). The term would also apply to persons who have a significant relationship with a domestic violence victim.

The privilege would also apply to "sexual assault victims" who seek advice, counseling, or other assistance as a result of injuries suffered from first degree rape (G.S. 14-27.2), second degree rape (G.S. 14-27.3), first degree sexual offense (G.S. 14-27.4), second degree sexual offense (G.S. 14-27.5), intercourse and sexual offenses with certain victims (G.S. 14-27.7), or statutory rape or sexual offense of person who is 13, 14, or 15 years old (G.S. 14-27.7A). The term would also apply to persons who have a significant relationship with a sexual assault victim.

Subject of Privilege: The privilege would allow a victim not to disclose, or to prevent anyone else from disclosing without the victim's consent, any oral or written communication, information, or materials that were either (1) made by, for, or about the victim, or (2) made, given to, or prepared by or for any agent, employee, or volunteer of a rape crisis center or domestic violence program.

Qualification of Privilege: A party seeking disclosure of the privileged information must obtain a written court order issued after completion of the following hearing and review process:

(1) The party seeking disclosure (applicant) must file a written motion with the court specifying the documents or testimony requested.

(2) The court must conduct a hearing, allowing the victim, the center, and the applicant to be heard.

(3) At the hearing, the applicant must establish, by clear and convincing evidence, a good faith, specific, and reasonable basis for believing:

a. The records or testimony are likely to contain specific, clearly identified information relevant and material to the civil proceeding, or exculpatory evidence relative and material to the issue of a defendant's guilt in a criminal proceeding, and are not sought solely for impeachment purposes.

b. The information is not otherwise available to the applicant.

c. The information is not merely cumulative of evidence already available to or obtained by the applicant.

(4) If the applicant cannot meet this burden of proof, then the court must deny the motion.

(5) If the applicant does meet this burden of proof, then the court shall require the documents be produced under seal. The court shall then examine the documents and shall not order disclosure unless the court finds after examination that:

a. The information is not otherwise available to the applicant.

b. The information is relevant and material to the civil proceeding, or relevant, material and exculpatory on the issue of guilt in a criminal proceeding, and not sought solely for impeachment purposes.

c. Disclosure of all or a portion of the information is essential to the proper administration of justice.

The court may limit disclosure to only the portions of the information that are relevant and material to a civil proceeding, or that are directly material and exculpatory on the issue of guilt in a criminal proceeding.

The bill places a duty on domestic violence programs and rape crisis centers to refuse to disclose the privileged information absent the written consent of the victim.

The privilege does not relieve any person from the duty to report child abuse or neglect as otherwise required by law.

Effective date: The act would become effective December 1, 2001, and apply to all actions and proceedings pending in the courts of this State on or after that date.

§ 50B-1. Domestic violence; definition.

(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; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1; 1997-471, s. 1.)

Annotations

Legal Periodicals. - For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

For comment, "North Carolina's Domestic Violence Act: Preventing Spouse Abuse?", see 17 N.C. Cent. L.J. 82 (1988).

For 1997 legislative survey, see 20 Campbell L. Rev. 459.

CASE NOTES

Applicability of Chapter. - This Chapter did not become effective until October 1, 1979, and applies only to acts of domestic violence occurring on or after that date. Story v. Story, 57 N.C. App. 509, 291 S.E.2d 923 (1982).

This Chapter is not designed to establish alternative grounds for jurisdiction over custody disputes apart from those set forth in Chapter 50A. Danna v. Danna, 88 N.C. App. 680, 364 S.E.2d 694, cert. denied, 322 N.C. 479, 370 S.E.2d 221 (1988).

Jurisdiction over Custody and Visitation Rights Is Governed by Chapter 50A. - Whenever the relief sought under this Chapter is a determination of custody or visitation rights, the existence of subject matter jurisdiction over the action is governed by Chapter 50A, just as it is in any other custody dispute. Danna v. Danna, 88 N.C. App. 680, 364 S.E.2d 694, cert. denied, 322 N.C. 479, 370 S.E.2d 221 (1988).

This Chapter does not establish an affirmative duty on the part of law enforcement agencies to protect victims or threatened victims of domestic violence upon request; its effect is limited to enabling such persons to more readily obtain the court's protection and such assistance as any local agency approached sees fit to give. Braswell v. Braswell, 98 N.C. App. 231, 390 S.E.2d 752, modified on other grounds, 330 N.C. 363, 410 S.E.2d 897 (1991).

Subjective Fear of Imminent Serious Bodily Injury - This section imposes a subjective test, rather than an objective reasonableness test, to determine whether an act of domestic violence has occurred. Brandon v. Brandon, 132 N.C. App. 646, 513 S.E.2d 589 (1999).

Evidence of Imminent Serious Bodily Injury - The evidence supported a finding that the husband threatened imminent serious bodily injury to the wife, where a deputy had to stop the husband from entering a rental house owned by the parties, the husband threatened the wife in the deputies' presence, and his subsequent threat to kill her was relayed to the wife. Brandon v. Brandon, 132 N.C. App. 646, 513 S.E.2d 589 (1999).

Cited in State v. Getward, 89 N.C. App. 26, 365 S.E.2d 209 (1988).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 383*

Short Title:	Local Government Tort Liability.	(Public)
Sponsors:	Representatives Nesbitt; Haire and Walend.	
Referred to:	Judiciary I.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-435 reads as rewritten:

"**§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.**

(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental ~~immunity,~~ immunity from the first dollar of damages up to the extent of insurance ~~coverage,~~ coverage or to the extent waived by the adoption of a resolution creating a funded reserve under this subsection, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute

liability for damage to person or property caused by an act or omission of the county or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the commission's resolution.

(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, and to the extent provided by resolution adopted pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance or the adoption of a resolution as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

(c) Nothing in this section shall apply to any claim in tort against a county for which the county is not immune from liability under the statutes or common law of this State."

SECTION 2. G.S. 160A-485 reads as rewritten:

"**§ 160A-485. Waiver of immunity through insurance purchase.**

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived ~~only to the~~ from the first dollar of damages up to the extent that the city is indemnified by the insurance contract from tort ~~liability.~~ liability or to the extent waived by the adoption of a resolution creating a funded reserve. No formal action other than the purchase of liability insurance shall be required to waive tort ~~immunity, and no~~ immunity. No city shall be deemed to have waived its tort immunity by any action other than the purchase of liability ~~insurance.~~ insurance or the adoption of a resolution creating a funded reserve under this subsection.

If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the

course of their employment, the city shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance

coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State."

SECTION 3. S.L. 1987-980 is repealed.

SECTION 4. Section 2 of S.L. 1998-200 is repealed.

SECTION 5. This act becomes effective October 1, 2001, and applies to causes of action arising on or after that date.

HOUSE BILL 383:
Local Government Tort Liability Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Nesbitt
Date:	March 27, 2001	**Summary by:**	Frank W. Folger
Version:	H383-CSSO-4[v.2]		Committee Counsel

SUMMARY: ***This bill would allow local governments to waive immunity for negligence liability by the adoption of a funded reserve and clarify that any waiver of immunity is from the first dollar of damages.***

CURRENT LAW: Under the current law, local governments are authorized but not required to purchase insurance. The purchase of liability insurance waives a local government's immunity for negligence arising out of the exercise of a governmental function. Since local governments are not required to purchase insurance, some counties and cities use other types of coverage mechanisms to pay for tort claims, including self-funded reserves. However, not all types of coverage mechanisms constitute insurance for purposes of waiving immunity. Currently, the only types of coverage that constitute insurance for purposes of waiving immunity are (1) liability coverage by a company licensed to execute insurance in North Carolina, or private insurance, and (2) a local government risk pool where the risk is shared by two or more local governments. Additionally, the purchase of insurance waives immunity only to the extent of insurance coverage. For example, a local government may opt to have liability coverage for claims that exceed $2 million but are less than $4 million. In this instance, the local government has not waived its immunity for any claims where the damages are less than $2 million.

BILL ANALYSIS: This bill would make two substantive changes that apply to both counties and cities.

Section 1. amends N.C.G.S. §153A-435 applicable to counties. 1) It would require a county that uses a self-funded reserve to cover its liability to adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance for purposes of waiving governmental immunity. This would waive governmental immunity of any county that uses a self-funded reserve for payment of claims but only to the extent specified in the resolution. 2) It would clarify that purchase of insurance by a county waives its governmental immunity from the first dollar of damages up to the extent of insurance coverage or to the extent specified in the resolution creating the funded reserve. For counties with private insurance, the effect of this provision is to require payment of claims from the first dollar of damages regardless of minimum policy limits, but in no event would their liability exceed maximum policy limits.

Section 2. amends N.C.G.S. §160A-485 applicable to cities and towns and makes the same substantive changes as in Section 1.

Section 3. would repeal Chapter 980 of the 1987 Session Laws, the local act which allows Mecklenburg and Catawba Counties to use self-funded reserves.

Section 4. would repeal S.L. 1998-200, the local act which allows the city of Raleigh to use a self-funded reserve.

Section 5. This act would become effective on October 1, 2001 and would apply to causes of action arising on or after that date.

BACKGROUND: This bill was recommended by the 1999-2000 LRC Study Committee on State Tort Liability and Immunity in its report to the 2001 General Assembly. That same committee recommended legislation to raise the maximum recovery allowed for tort claims against the State from $150,000 to $500,000, which was enacted into law in Section 7A of S.L. 2000-1840. That committee took up the issue of local government tort liability in the interim between the 2000 Session and the 2001 Session, held four meetings on the issue, and heard testimony from the Institute of Government, the North Carolina League of Municipalities, the North Carolina County Commissioners' Association, the North Carolina Academy of Trial Lawyers, and county and city representatives, among other parties.

Trina Griffin, co-counsel to the LRC Committee on State Tort Liability and Immunity, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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HOUSE BILL 383*
PROPOSED COMMITTEE SUBSTITUTE H383-CSSO-4 [v.2]

3/26/2001 4:19:50 PM

Short Title: Local Government Tort Liability. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-435 reads as rewritten:

"**§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.**

(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental ~~immunity,~~ immunity from the first dollar of damages up to the extent of insurance ~~coverage,~~ coverage or to the extent waived by the adoption of a resolution creating a funded reserve under this subsection, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the county or

any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the commission's resolution.

(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, and to the extent provided by resolution adopted pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance or the adoption of a resolution as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

(c) Nothing in this section shall apply to any claim in tort against a county for which the county is not immune from liability under the statutes or common law of this State."

SECTION 2. G.S. 160A-485 reads as rewritten:

"**§ 160A-485. Waiver of immunity through insurance purchase.**

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived ~~only to the~~ from the first dollar of damages up to the extent that the city is indemnified by the insurance contract from tort ~~liability.~~ liability or to the extent waived by the adoption of a resolution creating a funded reserve. No formal action other than the purchase of liability insurance shall be required to waive tort ~~immunity, and no~~ immunity. No city shall be deemed to have waived its tort immunity by any action other than the purchase of liability ~~insurance.~~ insurance or the adoption of a resolution creating a funded reserve under this subsection.

If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the

course of their employment, the city shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance

coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State."

SECTION 3. Chapter 980 of the 1987 Session Laws is repealed.

SECTION 4. Section 2 of S.L. 1998-200 is repealed.

SECTION 5. This act becomes effective October 1, 2001, and applies to causes of action arising on or after that date.

House Judiciary I Committee

March 29, 2001

Minutes

The House Judiciary I Committee met on Thursday, March 29, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Clary, Insko, Nesbitt, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that Representative Redwine had requested that House Bill 747 not be considered during this meeting and would be removed from the agenda.

Representative Grady was recognized for an explanation of House Bill 514, AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS, (Attachment III). He stated that the bill would require public bodies such as town councils, school boards and county commissions, and any board covered by the open meetings law, to make a tape or video recording of closed sessions. He said that such recordings would not be made available to the public until after the purpose of the closed session had been resolved. He said that current law states that minutes must be made available from closed board meetings so that a person, not in attendance, may have a reasonable understanding of what transpired, but that this is not being done in many cases.

Representative Blue asked if the bill would apply to conferences in chambers regarding judicial proceedings.

Ms. Susan Sitze, Committee Counsel, stated that the bill addresses executive type governmental bodies such as elected boards and commissions.

A copy of the bill analysis prepared by Ms. Sitze is attached, (Attachment IV).

Chairman Hackney called attention to section (b) of a handout of statutes that was distributed to the committee, (Attachment V). "Public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that has two or more members exercising a legislative, policy-making, quasi-judicial, administrative, or advisory function. He said that there is a specific exemption for professional staff of a public body and medical staff of a public hospital. He said that the statute does not expressly exclude judicial, but it does not include them either.

Representative Grady stated that it was his understanding that the judiciary was not included.

Mr. Gary Govert, representing the North Carolina Press Association, spoke in support of the bill. He said that the bill would allow the public to find out, when the time is appropriate, what actually occurred during a closed session. He noted that current accounts of closed meetings are often cryptic and uninformative.

Mr. Anders Gyllenhaal, editor of the Raleigh News and Observer, spoke in favor of the bill.

Representative Insko expressed concern regarding taping of discussions involving personnel accusations that may later prove to be false.

Representative Nesbitt noted that there should be a way to secure very sensitive tapes, but said that the bill has merit.

Mr. Jim Blackburn, North Carolina Association of County Commissioners, spoke in opposition to the bill.

Mr. Andy Romanet, North Carolina League of Municipalities, spoke in opposition to the bill.

Ms. Leanne Winner, North Carolina School Boards Association and the North Carolina Council of School Attorneys, spoke in opposition to the bill. She stated that federal laws govern student records and added that if the closed sessions were taped, she feared some confidential information about students would be released by accident.

Representative Nesbitt asked what could be done to insure an accurate accounting of closed sessions.

Mr. Blackburn replied that remedies are available in the courts.

No action was taken on the bill.

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MARCH 29, 2001

AGENDA

HOUSE BILL 514 – RECORD CLOSED SESSIONS
REPRESENTATIVE ROBERT GRADY

HOUSE BILL 747 – MAKE ESC SURTAX PERMANENT
REPRESENTATIVE DAVID REDWINE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

March 29, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Crew	BPMHL
Tom Whitaker	ESC
David Clegg	ESC
GARY GOVERT	NCPA
Anders Gyllenhaal	News + Observer
Bj Taylor	NCPA
Guilford Hawthorne	UNC Chapel Hill
Andy Lomont	NCLM
Jim Blackburn	NC Association of County Commrs
Patrice Roesler	" " " " "
Alan Garland	Electricities
Leanne Winner	NCSBA
Brian Francis	Mecklenburg County
HUGH TILSON	NCHA
Ted Vaden	Chapel Hill-Neuse
Kimwood Jones	NCHA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 514

Short Title:	Record Closed Sessions.	(Public)
Sponsors:	Representatives Grady; Hensley, Starnes, and Russell.	
Referred to:	Judiciary I.	

March 7, 2001

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. ~~Such~~ In an open meeting, those minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall ~~keep a general account~~ make and keep either a sound recording or a combination video and sound recording of the closed ~~session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings~~ session. The public body shall designate a person or persons to be responsible for making and maintaining the recording of the closed session and for certifying that the entire closed session, including all discussion taking place therein, was duly recorded as required by this subsection. ~~Such minutes and accounts~~ All such minutes and recordings shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes ~~or an account~~ and recordings of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

SECTION 2. G.S. 143-318.11(c) reads as rewritten:

"(c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or

citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session. The motion to hold a closed session shall designate a person or persons to make and maintain the minutes and the recording of the closed session."

SECTION 3. This act becomes effective October 1, 2002.

HOUSE BILL 514:
Record Closed Sessions

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Grady
Date:	March 29, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 514 requires that all closed meetings of public bodies be recorded and those recordings released after the justification for withholding details has passed.***

CURRENT LAW: The open meetings law applies to all official meetings of public bodies. A public body is "any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function". The term "public body" also includes the governing boards of "public hospitals".

Current law only requires public bodies to keep a "general account" of a closed session so that "a person not in attendance would have a reasonable understanding of what transpired". The current law does allow for the general account to be released for public inspection when public inspection would no longer frustrate the purpose of a closed session.

BILL ANALYSIS: House Bill 514 amends the open meetings laws to require a public body that meets in closed session to make a sound recording or combination video and sound recording of the closed session. The bill also requires the motion for closed session to designate the person to make and maintain the minutes and the recording of the closed session and for certifying that the entire closed session, including all discussion taking place therein, was duly recorded as required by the law.

These recordings would become part of the public record, but could be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

The act would be effective October 1, 2002.

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, 143-318.15, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (i) a meeting solely among the professional staff of a public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

(1979, c. 655, s. 1; 1985 (Reg. Sess., 1986), c. 932, s. 4; 1991, c. 694, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 570, s. 1; 1995, c. 509, s. 135.2(p); 1997-290, s. 1; 1997-465, s. 27.)

Editor's Note. - Subdivisions (1) and (2) in subsection (c) were renumbered as subdivisions (i) and

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(ii) pursuant to S.L. 1997-465, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

CASE NOTES

Definition of "Public Body" as Affecting Classification of Actions as "State Action." - The label given Chapter 131E is irrelevant in determining whether a private, non-profit hospital's suspension and revocation of staff privileges constitutes state action. Likewise, the definition of a "public body" for purposes of the open meetings statute does not establish a sufficient nexus for state action. Weston v. Carolina Medicorp, Inc., 102 N.C. App. 370, 402 S.E.2d 653 (1991).

Wake County Hospital System as a "Public Body." - By virtue of the definitions in subsection (b) of this section and § 159-39(a), the Wake County Hospital System is a "public body" that must, by law, record settlement terms considered in executive sessions; in addition, the public has the right to know the terms of settlements made by the system in actions for wrongful terminations of its agreements, since the funds from which the settlements are paid must be considered the county's funds. News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 47 (1982).

College's undergraduate court was a "public body" under this section. DTH Publishing Corp. v. University of N.C. 128 N.C. App. 534, 496 S.E.2d 8 (1998), cert. denied, 348 N.C. 496, 510 S.E.2d 382 (1998).

Withholding of Recordings from Closed Session. - Closed session of Undergraduate Court was authorized under § 143-318.11 and the recordings of the closed session may be withheld from public inspection pursuant to subsection (e) of this section. DTH Publishing Corp. v. University of N.C. 128 N.C. App. 534, 496 S.E.2d 8 (1998), cert. denied, 348 N.C. 496, 510 S.E.2d 382 (1998).

Public Records Act and This Section Compared. - The Public Records Act (§ 132-1 et seq.) and the Open Meetings Law (§ 143-318.10) are discrete statutes, each designed to promote in a different way openness in government. There is no suggestion in either statute that an agency not subject to one is, ipso facto, exempt from the other. News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

Agencies Exempt from § 143-318.10. - The Public Records Law (§ 132-1 et seq.) may apply to minutes from meetings of an agency exempt from the Open Meetings Law (§ 143-318.10). News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

The only meetings required by former § 143-318.2 to be open to the public were official meetings of the governing and governmental bodies of this State and its political subdivisions, including specified types of subsidiary or component parts of such bodies. Student Bar Ass'n Bd. of Governors v. Byrd, 293 N.C. 594, 239 S.E.2d 415 (1977).

University Board of Governors and Employees Not Covered by Former § 143-318.2. - Board of Governors of The University of North Carolina is not, itself, a "governmental body of this State," and former § 143-318.2 did not extend to the meetings of its employees, even though such employees be deemed a component part of the Board of Governors. Student Bar Ass'n Bd. of Governors v. Byrd, 293 N.C. 594, 239 S.E.2d 415 (1977).

Former § 143-318.2 did not require that meetings of the faculty of the School of Law of The University of North Carolina be open to the public. Student Bar Ass'n Bd. of Governors v. Byrd, 293 N.C. 594, 239 S.E.2d 415 (1977).

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Acquisition of Property. - Because the Open Meetings Law authorizes a closed session to discuss the acquisition of property, and § 158-7.1(c) requires that notice of the public hearing thereon describe the intention to approve it, it logically follows that the intent to approve the acquisition which is the subject of the notice may be formed in a closed session. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Applied in Winfas, Inc. v. Region P Human Dev. Agency, 64 N.C. App. 724, 308 S.E.2d 99 (1983).

Quoted in Cohn v. Wilkes Gen. Hosp., 127 F.R.D. 117 (W.D.N.C. 1989).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994); Multimedia Publ'g of N.C. Inc. v. Henderson County, 136 N.C. App. 567, 525 S.E.2d 786 (2000), cert. denied, 351 N.C. 474, - S.E.2d - (2000).

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. - It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

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(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) Repealed by Session Laws 1991, c. 694, s. 4.

(c) Calling a Closed Session. - A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 570, s. 2.

(1979, c. 655, s. 1; 1981, c. 831; 1985 (Reg. Sess., 1986), c. 932, s. 5; 1991, c. 694, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 570, s. 2; 1995, c. 509, s. 84; 1997-222, s. 2; 1997-290, s. 2.)

CASE NOTES

Legislative Intent of Subsection (a)(3). - The legislature did not intend the reference to claims and settlements in the second half of the (a)(3) exception to create a limitation to the exception, but only to provide an illustration of what types of discussions can proceed in closed session. Multimedia Publ'g of N.C. Inc. v. Henderson County, 136 N.C. App. 567, 525 S.E.2d 786 (2000), cert. denied, 351 N.C. 474, - S.E.2d - (2000).

Burden of Proof Requires Objective Indica. - The burden is on the government body to demonstrate that the attorney-client exception in (a)(3) applies, and the government body can only meet

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its burden by providing some objective indicia that the exception is applicable under the circumstances; mere assertions by the body or its attorney(s) in pleadings will not suffice. Multimedia Publ'g of N.C. Inc. v. Henderson County, 136 N.C. App. 567, 525 S.E.2d 786 (2000), cert. denied, 351 N.C. 474, - S.E.2d - (2000).

The present attorney-client exception in subsection (a)(3) does not require a claim to be pending or threatened before the privilege of a closed session may be invoked by the government body. Multimedia Publ'g of N.C. Inc. v. Henderson County, 136 N.C. App. 567, 525 S.E.2d 786 (2000), cert. denied, 351 N.C. 474, - S.E.2d - (2000).

Discussions Allowed Under Attorney-Client Privilege in (a)(3). - Discussions regarding the drafting, phrasing, scope, and meaning of proposed enactments would be permissible during a closed session under (a)(3), but as soon as discussions move beyond legal technicalities and into the propriety and merits of proposed enactments, the legal justification for closing the session ends. Multimedia Publ'g of N.C. Inc. v. Henderson County, 136 N.C. App. 567, 525 S.E.2d 786 (2000), cert. denied, 351 N.C. 474, - S.E.2d - (2000).

Judicial Application of Subsection (d). - Courts should ensure that the exception in subsection (d) of this section to the disclosure requirement should extend no further than necessary to protect ongoing efforts of a public body, respecting the policy against secrecy in government that underlies both the Public Records Act and Open Meetings Law. News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

"Administrative procedure" as used in subsection (a)(3) refers only to administrative proceedings instituted under the Administrative Procedure Act (N.C.G.S. § 150B-1, et seq.), and does not include mere clerical or managerial instructions to terminate a contract. H.B.S. Contractors v. Cumberland County Bd. of Educ., 122 N.C. App. 49, 468 S.E.2d 517 (1996), discretionary review improvidently allowed, 345 N.C. 178, 477 S.E.2d 926 (1996).

Settlement of Case. - Once the Board of County Commissioners authorized its attorney to settle the case, he was empowered to bind the board. Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991).

A Board of County Commissioners' oral offer, through its attorney, to settle voting rights litigation on specific, enforceable terms was sufficient to bind the board. Under North Carolina law, public bodies can give instructions to their attorneys to settle litigation, so long as the settlement terms are later entered into the minutes in open session. Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991).

Wake County Hospital System as a "Public Body". - By virtue of the definitions in §§ 143-318.10(b) and 159-39(a), the Wake County Hospital System is a "public body" that must, by law, record settlement terms considered in executive sessions; in addition, the public has the right to know the terms of settlements made by the system in actions for wrongful terminations of its agreements, since the funds from which the settlements are paid must be considered the county's funds. News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981), cert. denied, 305 N.C. 302, 291 S.E.2d 151, appeal dismissed and cert. denied, 459 U.S. 803, 103 S. Ct. 26, 74 L. Ed. 2d 47 (1982).

Undergraduate Court was entitled to hold a closed session to prevent the disclosure of education records protected by FERPA (Family Educational and Privacy Rights Act). DTH Publishing Corp. v. University of N.C. 128 N.C. App. 534, 496 S.E.2d 8 (1998), cert. denied, 348 N.C. 496, 510 S.E.2d 382 (1998).

Closed session of Undergraduate Court was authorized under this section and the recordings of the closed session may be withheld from public inspection pursuant to subsection § 143-318.10(e). DTH Publishing Corp. v. University of N.C. 128 N.C. App. 534, 496 S.E.2d 8 (1998), cert. denied, 348 N.C. 496, 510 S.E.2d 382 (1998).

Considerations Where Proceedings No Longer Ongoing. - The nature and purpose of the

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meetings at issue are relevant in determining the extent of protection, if any, provided in subsection (d) of this section for minutes of proceedings that are no longer ongoing. News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

Hospital "credentialing records" pertaining to a physician were confidential and privileged. Whisenhunt v. Zammit, 86 N.C. App. 425, 358 S.E.2d 114 (1987).

Commitment of Water Line in Executive Session. - Even if water line commitment made at an executive session violated open meetings law, it did not prevent defendant city from later committing itself to furnish water to citizen's property. After lengthy public hearings all facts pertinent to the case were publicly presented, including the city's proposal to furnish water line. Coulter v. City of Newton, 100 N.C. App. 523, 397 S.E.2d 244 (1990).

Disclosure Held Necessary Where Proceedings Not Ongoing. - Where Commission formed to investigate improprieties in a university athletic program had completed its proceedings and had reported to the university system's chief executive officer, and no further action or disposition by any higher ranking university officer was pending, the Commission's work, or any results depending on that work, could not have been compromised by public inspection of minutes of its meetings. News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

Quoted in Cohn v. Wilkes Gen. Hosp., 127 F.R.D. 117 (W.D.N.C. 1989); Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994); Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

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House Judiciary I Committee

April 3, 2001

Minutes

The House Judiciary I Committee met on Tuesday, April 3, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Starnes was recognized for an explanation of House Bill 794, AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM ACROSS THE RIGHT-OF-WAY OF A PUBLIC ROAD IN CALDWELL COUNTY FOR THE PURPOSE OF TARGET PRACTICE, (Attachment III). He said that the bill does exactly what the title states and offered to answer any questions.

A bill analysis prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV). She said that the bill would make this offense a Class 3 misdemeanor, which is the lowest level of misdemeanor.

Representative Sutton suggested that the bill should be a statewide bill.

Representative Starnes replied that many counties have very localized hunting laws and that some situations exist in mountainous areas where a road passes through a valley and hunters might be shooting from one side to the other at a higher elevation, but would actually be firing across the road.

Representative Arnold moved for a favorable report.

The motion carried, (Attachment V).

Representative Blue was asked to preside over the discussion of the following bill.

Chairman Hackney was recognized for an explanation of House Bill 665, AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR ASSAULT, BATTERY, AND FALSE IMPRISONMENT TO THREE YEARS IN ORDER TO PROVIDE THAT THE PERIOD OF LIMITATIONS FOR THESE INTENTIONAL TORTS IS AS LONG AS THE PERIOD OF LIMITATIONS FOR UNINTENTIONAL TORTS, (Attachment VI). Chairman Hackney stated that the bill was occasioned by an opinion written by Judge Hunter on the Court of Appeals who suggested this change. The bill equalizes the statute of limitations for intentional torts and unintentional torts for civil cases. He said that the reason that this bill is important is that sometimes there is a fine line between whether an act was intentional or negligent. The bill keeps the statute of limitations the same for libel and slander, but changes to three years for assault, battery and false imprisonment.

A bill analysis prepared by Ms. Sitze is attached, (Attachment VII).

Representative Sutton moved for a favorable report.

The motion carried, (Attachment VIII).

Mr. Rick Zechini, Committee Counsel, was recognized for an explanation of House Bill 451, AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION, (Attachment IX). Chairman Hackney noted that no vote would be taken on the bill because its companion was moving in the Senate, but that it had been place on the agenda in order to allow for the committee to become familiar with it prior to crossover.

Mr. Zechini stated that the bill resulted from recommendations of the Legislative Disaster Response and Recovery Commission. He said that work was currently being done on the bill in the Senate State Government committee, along with agency individuals from Emergency Management. He said that the resulting bill is likely to set up various levels, or tiers of disasters with a higher funding level being made available to disasters having the greatest impact on the state.

Discussion followed regarding the powers that would be given to the Governor in the bill.

Representative Arnold, who served on the Commission, commented on the various tiers of disasters and circumstances that would allow the Governor to take action. He said that in no way would the General Assembly be precluded from entering into negotiations or declaring emergencies and allocating funds.

The meeting was adjourned at 10:30 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 3 2001

AGENDA

HOUSE BILL 451 – AMEND NC EMERGENCY MANAGEMENT LAWS
REPRESENTATIVE GENE ROGERS

HOUSE BILL 665 – EXTEND LIMITATIONS FOR SOME INTENTIONAL TORTS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 794 – CALDWELL/DISCHARGE OF FIREARMS
REPRESENTATIVE EDGAR STARNES

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 3, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruth Sappie	NCDOT
Michelle Frazier	NC Bar Assoc.
Grady Mizelle	N.C. ConNet.
John McMillan	MFOS PA.
Estherine Davis	ElectriCities
ANN WORE	OUHS
Bill Wilson	NCATL
Dick Taylor	NCATL
Charles Crowe	NCATL
Chris Wilson	NCSHA
Tim Minton	NC Home Builders Assn
Jim Blackburn	Association of County Commissioners
Deb Ross	ACLU
JOHN GOODMAN	LINWOOD MERCER & ASSOC.
Boyd Cauble	City of Charlotte
David Ferrell	Hafer, Caldwell & Ferrell PA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 794

Short Title:	Caldwell/Discharge of Firearms.	(Local)
Sponsors:	Representatives Starnes; and Thompson.	
Referred to:	Judiciary I.	

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM ACROSS THE RIGHT-OF-WAY OF A PUBLIC ROAD IN CALDWELL COUNTY FOR THE PURPOSE OF TARGET PRACTICE.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to discharge a firearm across the right-of-way of any public road for the purpose of target practice.

SECTION 2. Violation of this act is a Class 3 misdemeanor.

SECTION 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

SECTION 4. This act applies only to Caldwell County.

SECTION 5. This act becomes effective October 1, 2001.

HOUSE BILL 794:
Caldwell/Discharge of Firearms

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Starnes
Date:	April 3, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 794 prohibits the discharge of a firearm across the right-of-way of a public road in Caldwell County for the purpose of target practice.***

BILL ANALYSIS: House Bill 794 makes it a Class 3 misdemeanor to discharge a firearm across the right-of-way of a public road for the purpose of target practice.

The bill provides for enforcement by law enforcement officers of the Wildlife Resources Commission, sheriffs and deputy sheriffs, and other peace officers with general subject matter jurisdiction.

A Class 3 misdemeanor is punishable by an absolute minimum of 1 day community punishment and an absolute maximum of 20 days active punishment, as well as a fine up to $200.

This act is effective October 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 794 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DISCHARGE OF A FIREARM ACROSS THE RIGHT-OF-WAY OF A PUBLIC ROAD IN CALDWELL COUNTY FOR THE PURPOSE OF TARGET PRACTICE.

☒ 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 665

Short Title:	Extend Limitations for Some Intentional Torts.	(Public)
Sponsors:	Representatives Hackney, Haire (Primary Sponsors); Goodwin, Weiss, and Luebke.	
Referred to:	Judiciary I.	

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR ASSAULT, BATTERY, AND FALSE IMPRISONMENT TO THREE YEARS IN ORDER TO PROVIDE THAT THE PERIOD OF LIMITATIONS FOR THESE INTENTIONAL TORTS IS AS LONG AS THE PERIOD OF LIMITATIONS FOR UNINTENTIONAL TORTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-54 reads as rewritten:

"**§ 1-54. One year.**

Within one year an action or proceeding –

(1) Repealed by Session Laws 1975, c. 252, s. 5.

(2) Upon a statute, for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation.

(3) For ~~libel, slander, assault, battery, or false imprisonment.~~libel and slander.

(4) Against a public officer, for the escape of a prisoner arrested or imprisoned on civil process.

(5) For the year's allowance of a surviving spouse or children.

(6) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness after the foreclosure of a mortgage or deed of trust on real estate securing such debt, promissory note, bond or other evidence of indebtedness, which period of limitation above prescribed commences with the date of the delivery of the deed pursuant to the foreclosure sale: Provided, however, that if an action on the debt, note, bond or other evidence of indebtedness secured would be earlier

barred by the expiration of the remainder of any other period of limitation prescribed by this subchapter, that limitation shall govern.

(7) Repealed by Session Laws 1971, c. 939, s. 2.

(7a) For recovery of damages under Article 1A of ~~General Statutes Chapter 18B.~~Chapter 18B of the General Statutes.

(8) As provided in G.S. 105-377, to contest the validity of title to real property acquired in any tax foreclosure action or to reopen or set aside the judgment in any tax foreclosure action.

(9) As provided in Article 14 of Chapter 126 of the General Statutes, entitled 'Protection for Reporting Improper ~~Governmental~~ Government Activities'."

SECTION 2. G.S. 1-52 reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action –

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

(1a) Upon the official bond of a public officer.

(2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.

(3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

(4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.

(6) Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

(7) Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

(9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(10) Repealed by Session Laws 1977, c. 886, s. 1.

(11) For the recovery of any amount under and by virtue of the provisions of the Fair Labor Standards Act of 1938 and amendments thereto, said act being an act of Congress.

(12) Upon a claim for loss covered by an insurance policy which is subject to the three-year limitation contained in lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).

(13) Against a public officer, for a trespass, under color of his office.

(14) An action under Chapter 75B of the General Statutes, the action in regard to a continuing violation accrues at the time of the latest violation.

(15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S. 105-381.

(16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

(17) Against a public utility, electric or telephone membership corporation, or a municipality for damages or for compensation for right-of-way or use of any lands for a utility service line or lines to serve one or more customers or members unless an inverse condemnation action or proceeding is commenced within three years after the utility service line has been constructed or by October 1, 1984, whichever is later.

(18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in G.S. 1-47(6).

(19) For assault, battery, or false imprisonment."

SECTION 3. This act becomes effective October 1, 2001, and applies to claims arising on or after that date.

HOUSE BILL 665:
Extend Limitations for Some Intentional

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representatives Hackney and Haire
Date:	April 3, 2001		
Version:	First Edition	**Summary by:**	Frank W. Folger Committee Counsel

SUMMARY: ***This bill would extend the statute of limitation for assault, battery and false imprisonment to three years from one year.***

CURRENT LAW: N.C.G.S. §1-54 provides that civil actions for the following intentional torts must be brought within one year of the claim arising: libel, slander, assault, battery, and false imprisonment. Unintentional torts have a three-year statute of limitations. N.C.G.S. §1-52.

BILL ANALYSIS: Section 1. would remove the three intentional torts of assault, battery and false imprisonment from the list of claims with a one-year limitation period in N.C.G.S. §1-54.

Section 2. would add these torts to the list of claims in N.C.G.S. §1-52 that have a three-year statute of limitations.

BACKGROUND: Three years is considered the standard statute of limitations. It applies to most civil actions regarding: unintentional torts, contract disputes, liabilities created by federal or State statute, fraud or mistake, trespass, conversion, and other more specific claims.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 665 A BILL TO BE ENTITLED AN ACT TO EXTEND THE STATUTE OF LIMITATIONS FOR ASSAULT, BATTERY, AND FALSE IMPRISONMENT TO THREE YEARS IN ORDER TO PROVIDE THAT THE PERIOD OF LIMITATIONS FOR THESE INTENTIONAL TORTS IS AS LONG AS THE PERIOD OF LIMITATIONS FOR UNINTENTIONAL TORTS.

☒ 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 .)

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☐ 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

HOUSE BILL 451

Short Title:	Amend NC Emergency Management Laws.	(Public)
Sponsors:	Representatives Rogers, Arnold, Smith, and Wright.	
Referred to:	Judiciary I.	

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-4 reads as rewritten:

"**§ 166A-4. Definitions.**

The following definitions apply in this Article:

(1) "Associated Expenses." – The costs of administering the disaster or emergency assistance program.

~~(1) "Emergency Management." Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.~~

~~(2) "Emergency Management Agency." A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.~~

(2) "Contiguous Counties or Other Political Subdivisions." – Those land areas that abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of the counties or other political subdivisions.

(3) "Disaster." – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(4) "Disaster Area." – The geographical areas affected by the disaster, including contiguous counties or other political subdivisions.

(5) "Eligible Entity." – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Chapter of the General Statutes.

(6) "Emergency." – The condition that exists whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent.

(7) "Emergency Management." – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(8) "Emergency Management Agency." – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(9) "Law Enforcement Officer." – Any officer of the State of North Carolina or any of its political subdivisions authorized to make arrests; any other person authorized under the laws of North Carolina to make arrests and either acting within his territorial jurisdiction or in an area in which he has been lawfully called to duty by the Governor or any mayor or chair of the board of county commissioners; any member of the armed forces of the United States, the North Carolina national guard, or the State defense militia called to duty in a state of emergency in North Carolina and made responsible for enforcing the laws of North Carolina or preserving the public peace; or any officer of the United States authorized to make arrests without warrant and assigned to duties that include preserving the public peace in North Carolina.

(10) "Mayor." – The mayor or other chief executive official of a municipality or, in case of the mayor's absence or disability, the person authorized to act in the mayor's stead. Unless the governing body of the municipality has specified who is to act in lieu of the mayor with respect to a particular power or duty set out in this Article, the word "mayor" shall apply to the person generally authorized to act in lieu of the mayor.

~~(4)~~(11) "Political Subdivision." – Counties and incorporated cities, towns and villages.

(12) "Preliminary Damage Assessment." – The process used by State, local, or federal emergency management workers to determine the severity and magnitude of damages caused by a disaster event.

(13) "Private Nonprofit Utilities." – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(14) "State Acquisition and Relocation Fund." – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program (HMGP) Acquisition and Relocation program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the HMGP Program and the cost of a comparable home located outside the 100-year floodplain.

(15) "State of Emergency." – A state of emergency found and proclaimed by the Governor under the authority of G.S. 166A-6, by any mayor or other municipal official or officials, by any chair of the board of commissioners of any county or other county official or officials, by any chair of the board of county commissioners, by any chief executive official or acting chief executive official of any county or municipality acting under the authority of any other applicable statute or provision of the common law to preserve the public peace in a state of emergency, or by any executive official or military commanding officer of the United States or the State of North Carolina who becomes primarily responsible under applicable law for the preservation of the public peace within any part of North Carolina.

(16) "Type I Disaster." – A disaster of limited severity that causes damages within the jurisdictional boundaries of one or more political subdivisions: (i) that meet or exceed the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123; or (ii) that meet or exceed the State infrastructure criteria as provided in this Chapter, but for which the State has not yet received a major disaster declaration by the President of the United States pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., ("The Stafford Act").

(17) "Type II Disaster." – A disaster that causes damages within the jurisdictional boundaries of one or more political subdivisions that meet or exceed the criteria established for a major disaster declaration under the Stafford Act.

(18) "Type III Disaster." – A disaster that causes damages within the jurisdictional boundaries of one or more political subdivisions that:

a. Meet or exceed the criteria established for a major disaster declaration under the Stafford Act that are reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or

b. Require the Governor to call a special session of the General Assembly to implement, activate, or retool programs established in S.L. 1999-463 Extra Session or to create other

programs to meet the unmet needs of individuals, persons, or political subdivisions affected by a disaster."

SECTION 2. G.S. 166A-5 reads as rewritten:

"**§ 166A-5. State emergency management.**

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. – The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.
3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.
4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of emergency, state of disaster, imminent threat of disaster or emergency management planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the ~~removal.~~removal of the debris.
8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and

to account to the State Treasurer for any funds received for such property.

9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. – The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management activities and shall have:

a. The power, as delegated by the Governor, to activate the State and local plans applicable to the areas in question and he shall be empowered to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Article or any other provision of law.

a1. The power, as delegated by the Governor, to adopt the rules and procedures needed to implement this Chapter.

a2. The Secretary shall develop a system of damage assessment through which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

b. Additional authority, duties, and responsibilities as may be prescribed by the Governor, and he may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be

incorporated into department regulations and into executive orders of the Governor.

c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.

d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network."

SECTION 3. G.S. 166A-6 reads as rewritten:

"**§ 166A-6. State of <u>emergency, threatened disaster, and state of</u> disaster.**

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

<u>(a1) When the Governor determines that a state of emergency exists in any part of North Carolina, the Governor may exercise the powers conferred by this section if the Governor further finds that local control of the emergency is insufficient to assure adequate protection for lives and property. Local control shall be deemed insufficient only if any of the following circumstances exist:</u>

<u>(1) Needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have</u>

not enacted appropriate ordinances or issued appropriate proclamations as authorized by G.S. 166A-8.

(2) Local authorities have not taken implementing steps under such ordinances or proclamations, if enacted or proclaimed, for effectual control of the emergency that has arisen.

(3) The area in which the state of emergency exists has spread across local jurisdictional boundaries, and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered.

(4) The scale of the emergency is so great that it exceeds the capability of local authorities to cope with it.

(a2) The Governor, when acting under the authority of this section, may by proclamation impose prohibitions and restrictions in all areas affected by the state of emergency and give to all participating State and local agencies and officers any directions needed to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner that, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

(a3) The Governor in the Governor's discretion, as appropriate to deal with the emergency then occurring or likely to occur, may impose any one or more or all of the types of prohibitions and restrictions enumerated in G.S. 166A-8A and may amend or rescind any prohibitions and restrictions imposed by local authorities.

(a4) Any person who violates any provision of a proclamation of the Governor issued under the authority of this section is guilty of a Class 2 misdemeanor.

(a5) The Governor, by proclamation, or the General Assembly, by resolution, may declare a Type I, Type II, or Type III Disaster, if warranted, based upon the severity of damage caused by a disaster that impacts the State. Such a declaration, if made, shall be based upon a preliminary damage assessment provided to the Governor or the General Assembly.

(a6) A Type I disaster may be declared if all of the following criteria are met:

(1) A local state of emergency has been declared pursuant to G.S. 166A-8.

(2) The governing body of any municipality or county seeking disaster assistance sends a written request for a Type I disaster declaration to the Governor or the General Assembly within five days of the declaration of the local state of emergency.

(3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria as provided in this Chapter.

(4) A major disaster declaration by the President of the United States pursuant to 42 U.S.C. § 5121, et seq. ("The Stafford Act") has not yet been declared.

(a7) A Type I disaster declaration may be made by the Governor or the General Assembly prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency (FEMA), or any other federal agency. A Type I disaster declaration shall expire 30 days after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(a8) A Type II disaster may be declared if a major disaster declaration by the President of the United States pursuant to the Stafford Act has been issued. The Governor may request federal disaster assistance under the Stafford Act without making a Type I disaster declaration. A Type II disaster declaration shall expire six months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(a9) A Type III disaster may be declared if the President of the United States issues a major disaster declaration under the Stafford Act. A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(a10) Any state of disaster declared before January 1, 2002, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(a11) When it is determined by the Governor that a great public crisis, disaster, riot, catastrophe, or any other similar public emergency exists, or the occurrence of any such condition is imminent, and, in the Governor's opinion, it is necessary to evacuate any building owned or controlled by any department, agency, institution, school, college, board, division, commission, or subdivision of the State in order to maintain public order and safety or to afford adequate protection for lives or property, the Governor may issue an order of evacuation directing all persons within the building to leave the building and its premises. The order shall be delivered to any law enforcement officer or officer of the national guard, and the officer shall, by a suitable public address system, read the order to the occupants of the building and demand that the occupants evacuate the building within the time specified in the Governor's order.

Any person who willfully refuses to leave the building as directed in the Governor's order shall be guilty of a Class 2 misdemeanor.

(b) In addition to any other powers conferred upon the Governor by law, during ~~the state of disaster, he~~ a state of emergency or disaster, the Governor shall have the following:

(1) To utilize all available State resources as reasonably necessary to cope with an ~~emergency,~~ emergency or disaster, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Article.

(c) In addition, during a state of emergency or disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a local governmental unit which restricts the immediate relief of human suffering;

(5) To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and

magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(d) In preparation for a state of emergency or disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for disasters."

SECTION 4. Article I of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-6A. State-sponsored disaster and emergency assistance programs.**

(a) Pursuant to G.S. 166A-6, the Governor or the General Assembly may declare a state of emergency and state of disaster. The Governor or the General Assembly may declare a Type I, Type II, or Type III disaster under the provisions of this Chapter.

(b) The Governor may make grants to political subdivisions for disaster assistance programs authorized by this Chapter of the General Statutes or other disaster programs that are enacted by the General Assembly. Political subdivisions and individuals shall apply for disaster assistance programs within the prescribed application period. Benefits under the disaster assistance programs authorized by this Chapter may continue to be disbursed after the termination of the disaster or emergency declaration.

(c) The State and eligible entities may be compensated for associated expenses.

(d) Pursuant to the declaration of a Type I disaster, the following programs may be implemented:

(1) Individual Assistance. – The Governor may make a grant to a local governmental unit in an area adversely affected by a declared disaster. The local governmental unit shall use the funds to make grants to individuals or families who are unable to meet disaster-related necessary expenses or other serious needs resulting from a disaster. In disaster areas, the Governor may make grants to meet the needs of individuals and families regardless of whether the President has made a major disaster declaration. Individual Assistance programs may include all of the following:

a. Funding to provide temporary housing and rental assistance.

b. Funding to repair or replace real property and thereby meet the unmet real property needs of individuals or families with disaster-related real property losses. These funds shall be used to make repair and replacement housing grants available to the individuals or families in an amount necessary to relocate the individual or family to safe, decent, and sanitary housing, but shall not exceed seventy-five thousand dollars ($75,000) per family.

c. Funding to replace personal property (including clothing, tools, and equipment).

d. Funding to repair, replace, or provide privately owned vehicles or to provide public transportation.

e. Funding for medical or dental expenses.

f. Funding for funeral or burial expenses resulting from the disaster.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

h. Funding for legal counseling.

(2) Public Assistance. – The Governor may make grants for public assistance programs. To receive public assistance grants, eligible entities must participate in the National Flood Insurance Program and must have an approved hazard mitigation plan within one year after the enactment of this statute.

a. The Governor may make public assistance grants to a political subdivision for a public utility or to a person or entity that owns or operates an eligible private nonprofit utility. The public assistance grants may include associated expenses incurred by the political subdivision, person, or entity.

b. Public Assistance programs include all of the following:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.

c. Pursuant to G.S. 166A-6, for any Type I disaster, the State of North Carolina, through the Governor, may provide disaster or emergency assistance to any political subdivision or eligible private nonprofit utility for public assistance programs only when both of the following occur:

1. There is a minimum of ten thousand dollars ($10,000) in uninsurable losses.
2. The losses equal or exceed five percent (5%) of the annual operating budget.

d. Each political subdivision or eligible private nonprofit utility receiving a State public assistance grant may be required to provide matching funds to meet eligible costs and expenses.

e. Pursuant to G.S. 166A-6A, for Type I disasters, political subdivisions, and owner or operator of an eligible private nonprofit utility may be required to provide non-State matching funds not to exceed twenty-five percent (25%) of the eligible costs of the public assistance grant.

(e) For Type II or Type III disaster declarations, the Governor may make disaster assistance grants when the federal assistance authorized by the Stafford Act does not fully meet the needs of the individual or family. Associated expenses may be available to the State and to eligible entities.

(1) Programs offered under Type II disasters include all of the following:

a. State Acquisition and Relocation Funds (SARF).

b. Repair and replacement housing grants available to the individuals or families in an amount necessary to relocate the individual and family to safe, decent, and sanitary housing not to exceed seventy-five thousand dollars ($75,000) per family.

(2) Programs offered under Type III disasters include all of the following:

a. State Acquisition and Relocation Funds (SARF).

b. Repair and replacement housing grants available to the individuals or families in an amount necessary to relocate the individual and family to safe, decent, and sanitary housing not to exceed seventy-five thousand dollars ($75,000) per family.

c. Any programs authorized by the General Assembly."

SECTION 5. G.S. 166A-8 reads as rewritten:

"**§ 166A-8. Local emergency authorizations.**

(1) A local state of emergency may be declared for any disaster, as defined in ~~G.S. 166A-4 under the provisions of Article 36A of G.S. Chapter 14.~~G.S. 166A-4.

(2) ~~Such a~~The declaration shall activate the local ordinances authorized in ~~G.S. 14-288.12 through 14-288.14~~ G.S. 166A-8A through G.S. 166A-8C and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance there under.

(3) The timing, publication, amendment and recision of local "state of emergency" declarations shall be in accordance with the local ordinance."

SECTION 6. Article 1 of Chapter 166A of the General Statutes is amended by adding the following new sections:

"**§ 166A-8A. Powers of municipalities to enact ordinances to deal with states of emergency.**

(a) The governing body of any municipality may enact ordinances designed to permit the imposition of prohibitions and restrictions during a state of emergency. The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency and to impose those authorized prohibitions and restrictions appropriate at a particular time. The ordinances authorized by this section may prohibit and restrict any of the following:

(1) The movements of people in public places.

(2) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

(3) The possession, transportation, sale, purchase, and consumption of alcoholic beverages.

(4) The possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline.

(5) Any other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

(b) This section is intended to supplement and confirm the powers conferred by G.S. 160A-174(a) and all other general and local laws authorizing municipalities to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(c) Any ordinance of a type authorized by this section promulgated prior to June 19, 1969, shall, if otherwise valid, continue in full force and effect without reenactment.

(d) Any person who violates any provision of an ordinance or a proclamation enacted or proclaimed under the authority of this section is guilty of a Class 3 misdemeanor.

"**§ 166A-8B. Powers of counties to enact ordinances to deal with states of emergency.**

(a) The governing body of any county may enact ordinances designed to permit the imposition of prohibitions and restrictions during a state of emergency.

(b) The ordinances authorized by this section may permit the same prohibitions and restrictions to be imposed as enumerated in G.S. 166A-8(A). The ordinances may delegate to the chair of the board of county commissioners the authority to determine and proclaim the existence of a state of emergency and to impose those authorized prohibitions and restrictions appropriate at a particular time.

(c) No ordinance enacted by a county under the authority of this section shall apply within the corporate limits of any municipality or within any area of the county over which the municipality has jurisdiction to enact general police-power ordinances unless the municipality by resolution consents to its application.

(d) Any person who violates any provision of an ordinance or a proclamation enacted or proclaimed under the authority of this section is guilty of a Class 3 misdemeanor.

"**§ 166A-8C. Power of chair of board of county commissioners to extend emergency restrictions imposed in municipality.**

(a) The chair of the board of commissioners of any county who has been requested to do so by a mayor may by proclamation extend the effect of any one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 166A-8(A). The chair may extend the prohibitions and restrictions to any area within the county in which the chair determines it to be necessary to assist in controlling the state of emergency within the municipality. No prohibition or restriction extended by proclamation by the chair under the authority of this section shall apply within the limits of any other municipality or within any area of the county over which the municipality has jurisdiction to enact general police-power ordinances unless that other municipality by resolution consents to its application.

(b) Whenever any chair of the board of county commissioners extends the effect of municipal prohibitions and restrictions under the authority of this section to any area of the county, it shall be deemed that a state of emergency has been validly found and declared with respect to such area of the county.

(c) Any chair of a board of county commissioners extending prohibitions and restrictions under the authority of this section must take reasonable steps to give notice of its terms to those likely to be affected. The chair of the board of commissioners shall proclaim the termination of any prohibitions and restrictions extended under the authority of this section upon any of the following:

(1) The chair's determination that they are no longer necessary.

(2) The determination of the board of county commissioners that they are no longer necessary.

(3) The termination of the prohibitions and restrictions within the municipality.

(d) The powers authorized under this section may be exercised whether or not the county has enacted ordinances under the authority of G.S. 166A-8(B). Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 166A-8(B).

(e) Any person who violates any provision of any prohibition or restriction extended by proclamation under the authority of this section is guilty of a Class 3 misdemeanor.

"**§ 166A-8D. Effective time, publication, amendment, and recision of proclamations.**

(a) This section applies to proclamations issued under the authority of G.S. 166A-8A, 166A-8B, 166A-8C, and any other applicable statutes and provisions of the common law.

(b) All prohibitions and restrictions imposed by proclamation shall take effect immediately upon publication of the proclamation in the area affected unless the proclamation sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the affected area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any proclamation shall be made. This subsection shall not be governed by the provisions of G.S. 1-597.

(c) Prohibitions and restrictions may be extended as to time or area, amended, or rescinded by proclamation. Prohibitions and restrictions imposed by proclamation under the authority of G.S. 166A-8 shall expire five days after their last imposition unless sooner terminated under G.S. 166A-8, by proclamation, or by the governing body of the county or municipality in question. Prohibitions and restrictions imposed by proclamation of the Governor shall expire five days after their last imposition unless sooner terminated by proclamation of the Governor.

"**§ 166A-8E. Municipal and county ordinances may be made immediately effective if state of emergency exists or is imminent.**

(a) Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, this section shall control with respect to any ordinances authorized by G.S. 166A-8.

(b) Upon proclamation by the mayor or chair of the board of county commissioners that a state of emergency exists within the municipality or the county, or is imminent, any ordinance enacted under the authority of this Article shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chair of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of any such ordinance to be disseminated in a fashion that such substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made."

SECTION 7. G.S. 166A-14(c) reads as rewritten:

"(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of emergency or disaster."

SECTION 8. G.S. 14-288.12 through G.S. 14-288.17 and G.S. 14-288.19 are repealed.

SECTION 9. This act becomes effective December 1, 2001. 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.

House Judiciary I Committee

April 5, 2001

Minutes

The House Judiciary I Committee met on Thursday, April 5 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Nesbitt, Redwine, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet are attached, (Attachments I and II).

Chairman Hackney stated that the Committee would hear an explanation of House Bill 320, AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS, (Attachment III). He said that Representative Weiss would offer an explanation of the bill, followed by staff comment on the bill from a technical point of view, and then comments would be heard from the proponents and opponents of the bill.

Representative Weiss was recognized for the explanation. She said that the bill would clarify the existing law regarding safe storage of firearms by more clearly defining safe storage and would extend the responsibility to protect children from guns to those homes where children do not currently reside. Representative Weiss said that the bill states that anyone who stores or leaves a firearm in a manner in which the person knew, or should have known, that at minor would be able to gain access to the firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor, and the minor takes the gun to a school or exhibits it in a public place. She said that any person who stores or leaves a firearm in the same manner that she described would be guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor, and the minor uses the firearm to cause personal injury or death, not in self-defense, or uses the firearm in the commission of a crime. Representative Weiss said that 18 or 20 states have safe storage laws for firearms, and for all the states that have those laws, this responsibility extends to homes where minors do not reside, except in North Carolina. Representative Weiss said that the bill provides a safe harbor for certain ways of storing guns, but does not limit safe storage to that. She said that the sections do not apply if the firearm is kept unloaded and locked with the ammunition stored separately, or if the firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device. Representative Weiss pointed out that nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body. She also noted that this section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person, or if someone enters a home unlawfully, steals a gun and uses it in a crime.

Ms. Susan Sitze, Committee Counsel, was recognized for a technical explanation of the bill. A bill analysis was distributed to the members of the Committee, (Attachment IV).

Ms. Bonnie Lee Hill, Charlotte, was recognized and spoke in support of the bill. Ms. Hill was invited by North Carolinians Against Gun Violence, and shared the story of her son who was shot in the back by a teenager who was playing with a gun at a friend's house.

Mr. Paul Valone, President, Grass Roots North Carolina, spoke in opposition to the bill. He distributed materials to the Committee. They are included in the attachments to the minutes, (Attachment V).

Ms. Rachel Smith, representing the Million Mom March, spoke in support of the bill.

Ms. Nicole Palya, National Rifle Association, spoke in opposition to the bill.

Mr. Bruce Thompson, North Carolinians Against Gun Violence, spoke in support of the bill. He distributed a fact sheet to the Committee, (Attachment VI).

Ms. Henri McClees, National Rifle Association, spoke in opposition to the bill.

Mr. Tom Bennett, North Carolina Child Fatality Task Force, spoke in support of the bill. He distributed a handout to the members of the Committee, (Attachment VII).

Mr. Jim Mitz, Grass Roots North Carolina, spoke in opposition to the bill. He also distributed a handout to the Committee, (Attachment VIII).

The meeting adjourned at 11:00 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 5, 2001

AGENDA

HOUSE BILL 320 - SAFE STORAGE OF FIREARMS
REPRESENTATIVE JENNIFER WEISS

HOUSE BILL 884 – INNOCENCE PROTECTION ACT
REPRESENTATIVE DAN BLUE

ATTACHMENT II

VISITOR REGISTRATION SHEET

J Judiciary I — April 5, 2001
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Price	N Carolinians Against Gun Violence
	Lyndon Pkwy, Durham
Rachel Smith	Million Mom March - NC
	P.O. Box 10166 Raleigh
Joyce Kilpatrick	Ruder Finn Raleigh NC 27612
Leigh Divesay	Ruder Finn-Million Mom March
	3600 Glenwood Ave. Raleigh NC 27612
Kelly Quinlan	Ruder Finn
Michelle Frazier	NC Bar Assoc.
Kim Hibbard	NCLM
Peg Dorn	NC Conference of DAs
Johnson Britt	District Attorney District 16B Robeson County
BRYAN YERKE	GRASS ROOTS NORTH CAROLINA, RALEIGH
Chas Rodgers	Parker Poe et al
Jackie Street	PPNA
George Reed	NC Council of Churches
DL DEITCH	DOA/YAID
Julia White	Attorney General's office
Nat Mill	CCNC
Lad Pursue	CJRC
Steve Shaw	NC Pediatric Society
Sylvia M.B. Dake	Million Mom March of Wake Cty
James H Davis Jr	Grass Roots NC
CHARLES BROWN	Grass Roots of NC
Bill Fleming	GRNC
J. B. McCants	AOC
Jay Chaudhuri	Attorney General's Office
TOM BEATTIE	GRNC

VISITOR REGISTRATION SHEET

J-I — Name of Committee

4-5-01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Palya	NRA
Otis Carter	Carter & Associates
Henri McClees	McClees Consulting, INC.
Edie Reynolds	self
Joe McClees	McClees Consulting, INC
Jeff Ray	Grass Roots NC
Hugh Adams	GRNC
PAUL VALONE	PRESIDENT GRNC
Paula A. Wolf	Covenant w/ NC's Children
BRUCE THOMPSON	PATTON BOGGS ADAMS & BERNSTEIN
[signature]	" " " "

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 320

Short Title:	Safe Storage of Firearms.	(Public)
Sponsors:	Representatives Weiss, Easterling, Hunter; Adams, Alexander, Coates, Hensley, Insko, Jeffus, Luebke, McAllister, and Michaux.	
Referred to:	Judiciary I.	

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner ~~that~~ in which the person knew or should have known that ~~an unsupervised~~ a minor would be able to gain access to the ~~firearm,~~ firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b); or

(2) Exhibits it in a public ~~place in a careless, angry, or threatening manner;~~place.

~~(3) Causes personal injury or death with it not in self-defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Uses the firearm to cause personal injury or death, not in self-defense; or

(2) Uses the firearm in the commission of a crime.

(a2) Subsections (a) and (a1) of this section shall not apply if:

(1) The firearm is kept unloaded in a locked box or container, with the ammunition stored separately; or

(2) The firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

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

HOUSE BILL 320:
Safe Storage of Firearms

BILL ANALYSIS

Committee: House Judiciary I
Date: April 5, 2001
Version: 1st Edition

Introduced by: Rep. Weiss
Summary by: Susan L. Sitze
Committee Counsel

SUMMARY: ***House Bill 320 amends the law regarding storage of firearms to protect minors.***

CURRENT LAW: Current law provides a Class 1 misdemeanor for any person who resides in the same premises as a minor that stores or leaves a firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm without parental permission AND the minor either: (1) possesses it on educational property; (2) exhibits it in a public place in a careless, angry, or threatening manner; (3) causes personal injury or death with it not in self defense; or (4) uses it in commission of a crime.

BILL ANALYSIS: House Bill 320 amends G.S. 14-315.1 to provide a Class 1 misdemeanor to store or leave a firearm in a manner in which the person knew or should have known that a minor would be able to gain access without parental permission AND the minor gains possession of the firearm, AND the minor possesses it on educational property, or exhibits it in a public place. It removes the current requirements that the firearm be able to be discharged.

The statute is further amended to provide a Class A1 misdemeanor if a person stores or leaves a firearm in a manner in which the person knew or should have known that a minor could gain access without parental permission and the minor uses the firearm to cause personal injury or death, not in self-defense or uses the firearm in the commission of a crime.

There is an exemption if the firearm is kept unloaded, in a locked box or container, with the ammunition stored separately, or the firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

The bill becomes effective December 1, 2001, and applies to offenses committed on or after that date.

H1231-SMSA-001

GRNC

Grass Roots North Carolina / Forum for Firearms Education
Post Office Box 10684, Raleigh, NC 27605, (919) 664-8565, www.grnc.org

Flaws in HB 320: "Safe" Storage of Firearms

Summary
Although HB 320 claims to merely protect children, the over-reaching nature of its changes to existing mandatory storage requirements would: (1) Subject thousands of lawful gun owners to criminal prosecution for events beyond their control; and (2) Require gun owners to keep firearms unavailable for self-defense in order to protect themselves from prosecution.

Proposed changes to § 14-315.1(a):

- HB 320 changes existing law to apply to firearms misuse by minors who **do not reside** in the residence of the gun owner, and who may not even be under his or her control.
- While current law only applies only to the owner of a firearm which is misused by a minor, the bill now includes even people who **do not "own or possess"** the firearm. It could even be applied to a homeowner whose guest brings a gun into the home.
- While current law exposes gun owners to prosecution if they leave a firearm "in a condition that the firearm can be discharged," the bill removes this provision, meaning storage requirements would apply not only to unloaded firearms, but even to **parts of firearms** which could theoretically be assembled.
- While current law applies to people who leave a gun "in a manner that the person knew or should have known that an **unsupervised** minor would be able to gain access to the firearm," HB 320 removes the "unsupervised" provision, extending the law to gun owners who "should have known" a **supervised** minor could gain access to a firearm. Since a **supervised** minor is capable of accessing a locked gun cabinet or safe, there is virtually no storage method which could keep gun owners safe from prosecution for the misuse of stolen guns.
- Current law applies cases in which minors display firearms in a "careless, angry, or threatening manner," who "cause personal injury or death with it not in self defense," or who use it "in the commission of a crime." By contrast, HB 320 would extend to anyone whose gun is taken into "public," even if the gun is being used responsibly.
- Under a new section (a2), the only way lawful gun owners could protect themselves from prosecution is to store firearms "unloaded in a locked box or container, with **the ammunition stored separately** or "kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user." As thousands of people who have used guns for self-protection can attest, a gun which is locked away, unloaded and with the ammunition stored separately is useless for self-defense. Moreover, because several brands of trigger locks have been recalled due to defects which permit unauthorized access to the firearm, **no clear definition exists of what constitutes a "tamper-resistant" device**.

Scenario
You have an **unloaded** gun in a quick-access lock box, gun cabinet or even a gun safe along with ammunition. Without your knowledge, your son or daughter brings a friend home from school. The friend talks your child into breaking into the lock box—perhaps even with a sledge hammer and blow torch, as occurred in the Jonesboro, Arkansas school shootings—and they gain access to your gun. If they take it outside, even if it is unloaded and not misused, you are guilty of a Class 1 misdemeanor.

GRNC Position
Because objective research has found that mandatory gun storage laws have no impact on gun accidents, homicides, or total suicides among children; because research indicates such laws actually contribute to increases in rape, murder, and robbery in states which adopt them, and because HB 320 contains serious flaws in both its principles and language, **GRNC opposes the bill and will use both committee actions and recorded votes for candidate evaluation purposes in its "Remember in November" voter education project, through which nearly 100,000 voter guides and election alerts are issued.**

GRNC

Grass Roots North Carolina / Forum for Firearms Education
Post Office Box 10684, Raleigh, NC 27605, (919) 664-8565, www.grnc.org

Mandatory Gun Storage Laws: Costs & Benefits

To promote HB 320: "Safe" Storage of Firearms, the anti-gun group North Carolinians "Against Gun Violence" claims a child in North Carolina is involved in a gun-related death every 7 days (52 per year). What are the real numbers? Do mandatory storage laws reduce juvenile fatalities?

- In North Carolina during the most recent year for which CDC data is available (1998), there were 313 accidental deaths of all types among children under the age of 18. (1) 207 were killed in motor vehicle crashes, 27 drowned, 17 perished in fires, and 54 were killed in other non-firearm related accidents (falls, poisoning, etc.). Eight juveniles under the age of 18 died in accidents involving firearms. In other words, **for every North Carolina child that died from a gun accident, thirty-eight children died from tragic accidents that had nothing to do with firearms**.

- Among children under age 15 (the definition of "child" used by the National Center for Injury Prevention and Control), **the number of accidental gun deaths in 1998 drops to 5**, as compared to 97 motor vehicle deaths, 20 by drowning, 15 by fire, and 26 others by a variety of non-firearms related accidents.

- A 1991 report by the United States General Accounting Office notes that mechanical safety locks are unreliable in preventing children older than six years from using guns. (2) In this age group during 1998 in North Carolina, **only 2 accidental deaths were attributed to firearms**. Moreover, fatal accidents involving children most often occur in dysfunctional homes where a parent is drug or alcohol impaired-the type of home where trigger locks are unlikely to be used in the first place, regardless of the law.

- Of the 17 firearms-related homicides in children under age 18 in NC in 1998, 14 (82.4%) of the victims were black; 2 (11.8%) were Hispanic, and 1 (5.9%) was white. Black children are clearly having a problem with gun violence far out of proportion to their population. Perhaps the state should investigate the underlying causes of this problem rather than imposing statewide restrictions that may harm the safety and security of the general population.

- Obviously, the death of any child is a tragedy. But if groups like North Carolinians "Against Gun Violence" are truly concerned only about the welfare of children, couldn't their efforts be better spent on other, more serious causes of juvenile fatalities?

But if such laws save just one life, why not? Is there a cost in lives to enacting mandatory gun storage laws?

- As demonstrated by school shootings in Columbine and Jonesboro, in which murderers manufactured explosives and stole locked-away firearms, mechanical locking devices will not prevent determined teenagers from obtaining guns. Moreover, **a comprehensive multivariate study of mandatory gun storage laws found no significant impact of such laws on either gun homicides or total suicides among children**. (3)

- Beyond their ineffectiveness, **mandatory storage laws also exact a price in lives**: because criminals avoid armed citizens, storage laws reduce the deterrent effect of gun ownership, **research indicates that enacting such laws leads to increases in rape, murder and robbery**. In fact, during the first five years after passage of "safe" storage laws the fifteen states which adopted them faced annual average increases of over 300 more murders, 3,860 more rapes, 24,650 more robberies, and over 25,000 more aggravated assaults. (4) **Should North Carolina adopt laws that encourage rape, murder and robbery**?

Grass Roots North Carolina strongly urges you to oppose HB 320: "Safe" Storage of Firearms by all means procedural and substantive. Objective research demonstrated that not only are mandatory gun storage laws ineffective, but that they actually increase murder, rape and robbery. Do you want to support a "rapist protection act?"

References:

1) CDC: National Center for Injury Prevention and Control: WISQARS- Leading Causes of Death, North Carolina: 1998.
2) United States General Accounting Office, "Accidental Shootings: Many deaths and injuries caused by firearms could be prevented," March, 1991.
3) Lott, John R., Jr. & Whitley, John E. "Safe Storage Gun Laws: Accidental Deaths, Suicides, and Crime," Yale Law School, Program for Studies in Law, Economics and Public Policy Working Paper No. 237, March 29,2000. Schedule for publication in April 2001 issue of the Journal of Law and Economics.
4) Ibid. at note 3.

FOX NEWS.COM

Does Restriction of Gun Access Jeopardize Your Family's Safety?

Thursday, October 19, 2000

FOX NEWS

MERCED, Calif. — After a 6-year-old Michigan boy shot a classmate earlier this year, politicians responded in kind.

President Clinton has been ardent in his support for the further tightening of the country's gun-control laws.

"We simply have not done everything we can do to keep guns away from criminals and children," he said in a statement to the press.

Meanwhile, many of those critical of gun-control legislation maintain that highly-publicized tragedies such as Columbine may lead politicians to force restrictions on a family's right to protect itself with firearms.

"You're going to see unintended consequences, because people are either going to not have a gun to be able to defend themselves and their families, or it's not going to be as readily accessible because it's going to be locked up," said John Lott, author of *More Guns, Less Crime*.

A particularly distasteful example is the case of John Carpenter. With both parents away, a stranger wielding a pitchfork broke into his rural farmhouse on the outskirts of a city 60 miles north of Fresno, Calif., terrorized his five children and stabbed two of them to death before being shot and killed by sheriff's deputies.

Jonathon David Bruce, 27, cut the phone lines, blocked the doors and attacked the children, killing John William Jr., 7, and Ashley, 9.

"If a gun would have been here today, I'd have at least a daughter alive," Carpenter told the media shortly after the horrific crime.

However, the family's gun was safely hidden from 13-year-old Anna.

"She [Ashley] probably wouldn't even have been hurt — she would just have a couple scars like I did," Anna said.

Anna's father says she grew up around guns and insists that she knows how to use them responsibly.

"When he was backing Ashley across that hallway — if in her closet, there would have been a gun laying on her shelf, loaded for Anna to use — she says: 'Dad, without a shadow of a doubt, I could have walked up and shot him in the back of the head,'" Carpenter said.

"Ashley would have never been touched," he said.

While gun-control advocates are equally horrified by the grisly nature of Bruce's crime, they maintain that Carpenter's case doesn't disprove the need for tighter gun laws prohibiting the access of guns to minors.

"My heart goes out to the victims and families of that awful, horrible crime," said Nathan Ballard, San Francisco's deputy city attorney.

"But realistically, the most common scenario for the fatal, accidental shooting of a child is for the child to be playing with a loaded and unlocked firearm," he said.

The NRA itself agrees with Ballard's point of view.

Its Web page on information for parents, teachers and administrators — accessible at www.nrahq.org/safety/eddie/info.shtml — says that guns should always be stored in a manner that makes them absolutely inaccessible to minors.

— Fox News' Andrew Hard and Claudia Cowan contributed to this report

HB 320
SAFE STORAGE OF FIREARMS

FACT SHEET

- North Carolina is one of 18 states requiring that guns be stored so that they are inaccessible to minors. **The safe storage laws in most states apply to all gun owners, not just those with children residing in their homes.** However, our law is difficult to enforce because it does not clearly define "safe storage" and applies only to homes in which children reside.

- **HB 320 closes this loophole by defining "safe storage" and encouraging all gun owners to store their weapons safely.**

- Despite the current law, juveniles obtain adult-owned guns, especially handguns, stored improperly and within easy reach, and use them both at home and in the community.

- Currently, a North Carolina child 17 years or under is killed by a gun approximately every week in a homicide, suicide, or unintentional shooting.

- Currently, under N.C. Gen. Stat. § 14-315.1, if a person who resides in the same premises as a minor leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access, it is a Class 1 misdemeanor if a minor gains access **and** does one of the following: (1) possesses it on school property; (2) exhibits it in public in a careless, angry, or threatening manner; (3) uses the firearm to cause personal injury or death, not in self-defense; or (4) uses it in the commission of a crime.

- HB 320 will apply the current law to all gun owners in order to insure that firearms are stored safely out of the reach of children at all times and in all homes.

- Opponents of HB 320 claim that it would "mandate trigger locks or other locking devices on all firearms." Nothing in HB 320 requires that guns be locked away. Instead, HB 320 provides an affirmative defense if the owner chooses to keep their firearm stored safely and out of the reach of children.

- Opponents of HB 320 also claim that it punishes gun owners "if a juvenile steals your gun." **This is simply not true.** There is a provision in current law, which remains intact in HB 320, that **the law does not apply "if the minor obtained the firearm as a result of an unlawful entry by any person."**

WE HOPE THAT YOU WILL SUPPORT HB 320 AND MAKE NORTH CAROLINA SAFER FOR FAMILIES AND CHILDREN.

Distributed by Bruce Thompson
North Carolinians Against Gun Violence

House Judiciary I Committee

April 10, 2001

Minutes

The House Judiciary I Committee met on Tuesday, April 10, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Arnold, Blue, Blust, Insko, Nesbitt, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The first bill to be considered was House Bill 666, AN ACT MAKING IT A CRIMINAL OFFENSE TO OBTAIN AMBULANCE SERVICES FRAUDULENTLY IN HALIFAX COUNTY, (Attachment III). Chairman Hackney briefly explained the bill in the absence of the sponsor, Representative Crawford. The bill would add Halifax County to the list of counties in which it is a misdemeanor to request ambulance services without intending to pay for the service and to request unneeded ambulance services.

A bill analysis, prepared by Mr. Frank Folger, Committee Counsel, is attached, (Attachment IV).

Representative Sutton moved a favorable report. The motion carried, (Attachment V).

Chairman Hackney was recognized for continuation of the discussion of House Bill 643, AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS AND DOMESTIC VIOLENCE PROGRAMS. The bill was explained during the March 27,2001 meeting of the committee. Representative Hackney stated that he had been working with interested parties to formulate a consensus bill, (Attachment VI). A proposed committee substitute was distributed and Representative Hackney moved that it be adopted for the purpose of discussion. The motion carried.

Ms. Anne Winner, North Carolina Coalition Against Domestic Violence, stated that she thought the work was not completed on the bill, but that they were working toward consensus

Ms. Deborah Ross, American Civil Liberties Union, also stated that they wished to continue to work toward consensus.

Representative Arnold sent forth an amendment, (Attachment VII), and moved its adoption. The amendment would rewrite the title of the bill by changing the words "communications with sexual assault counselors" to "communications with agents of rape crisis centers."

The amendment was adopted.

Discussion followed regarding "general discovery." Representative Hackney stated that those promoting the bill worry that regular "fishing expeditions" into rape crisis and domestic crisis centers

would become routine and that people would stop going to them for fear that their confidences would not be respected. He said that the bill attempts to balance an ability to get information when it is really needed for an important relevant part of the case.

Ms. Susan Sitze, Committee Counsel, provided further explanation and responded to questions.

Following discussion, the bill was held over for a future meeting.

Vice Chair Dan Blue assumed the chair for the discussion of the following bill.

Chairman Hackney was recognized for an explanation of House Bill 575, AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION, (Attachment VIII). Representative Hackney stated that the torts of alienation of affection and criminal conversation have been abolished in most states. He said that it has been used as a tool of harassment in domestic situations and has its antecedents in women as property. He said that he felt it was time for North Carolina to join the mainstream of the states and abolish the torts.

A bill analysis, prepared by Mr. Rick Zechini, Committee Counsel, was distributed, (Attachment IX).

Mr. Lynn Burleson, representing the North Carolina Bar Association, was recognized and spoke in support of the bill. He stated that 41 states and the District of Columbia have abolished alienation of affection and 39 states and the District of Columbia have abolished the criminal conversation cause of action.

Mr. John Rustin, North Carolina Family Policy Council, was recognized and spoke in opposition to the bill.

Ms. Marcia Armstrong, North Carolina Association of Women Attorneys, spoke in support of the bill.

Mr. Ed Parker, a family law attorney, spoke in opposition to the bill

Mr. Jim Walker, a family law attorney, spoke in opposition to the bill.

Representative Hackney moved a favorable report for House Bill 576. The motion carried, (Attachment X).

The meeting adjourned at 10:50 a. m.

Joe Hackney

Representative Joe Hackney
Chairman

Emily Reynolds Freeman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 10, 2001

AGENDA

HOUSE BILL 576 – ABOLISH ALIENATION/AFFECTION CRIMINAL CONVERSATION
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 643 – TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 666 – HALIFAX COUNTY AMBULANCE SERVICES
REPRESENTATIVE JIM CRAWFORD

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 10, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible] Co
[illegible] Cremeans	NCATL
[illegible]	NCSR
Michelle Frazier	NC Bar Assoc.
Lynn P. Burleson	NC Bar Assoc.
Joye Meyer	NC Bar Assoc.
Maria Armstrong	NCAWA
[illegible]	NCCASOV
Lisa Grafstein	NCAWA
Tiffany [illegible]	Intern
Leslie Starrsdeck	DV Commission
Sonia Schmidt	NC Justice Center / NCAWA
Mark Osborne	AOC
Gene Russell	NC Family Policy Council
[illegible]	NCCPC
[illegible] Parker	Atty. - WDS, NC
[illegible]	Atty. Burleigh, NC
Deb Ross	NCCASA
[illegible] Rosa	NCATL
[illegible]	NFIC PA.
[illegible]	NCCPC
Bill Wilson	NCATL
Jerri McClees	McClees Consulting Inc
[illegible]	NC Sierra
[illegible]	NCCCS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 666

Short Title:	Halifax County Ambulance Services.	(Local)
Sponsors:	Representatives Crawford; and Allen.	
Referred to:	Local Government I.	

March 19, 2001

A BILL TO BE ENTITLED

AN ACT MAKING IT A CRIMINAL OFFENSE TO OBTAIN AMBULANCE SERVICES FRAUDULENTLY IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-111.2 reads as rewritten:

"**§ 14-111.2. Obtaining ambulance services without intending to pay therefor – certain named counties.**

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Anson, Ashe, Beaufort, Caldwell, Camden, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, Orange, Pasquotank, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only."

SECTION 2. G.S. 14-111.3 reads as rewritten:

"**§ 14-111.3. Making unneeded ambulance request in certain counties.**

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Ashe, Buncombe, Camden, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Halifax, Haywood, Hoke, Macon, Madison, Polk, Robeson, Washington, Wilkes and Yadkin."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

ATTACHMENT IV

HOUSE BILL 666:
Halifax County Ambulance Services.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Crawford
Date:	April 10, 2001	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: The bill would add Halifax County to the list of those counties in which it is a misdemeanor to request ambulances services without intending to pay for the service and to request unneeded ambulance services, effective December 1, 2001.

CURRENT LAW: In 43 counties it is a Class 2 misdemeanor to request an ambulance without intending to pay for the service, if financially able to do so. In 20 counties it is a Class 3 misdemeanor to request unneeded ambulance services or to make a false report that an ambulance is needed.

BILL ANALYSIS: The bill would add the County of Halifax to each of these lists.

EFFECTIVE DATE: The act would become effective December 1, 2001, and apply to acts on or after that date.

R. Erika Churchill, counsel to the House Local and Regional Government I Committee, contributed to this summary.

§ 14-111.2. Obtaining ambulance services without intending to pay therefor - certain named counties.

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Anson, Ashe, Beaufort, Caldwell, Camden, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, Orange, Pasquotank, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only.

(1967, c. 964; 1969, cc. 292, 753; c. 1224, s. 4; 1971, cc. 125, 203, 300, 496; 1973, c. 880, s. 2; 1977, cc. 63, 144; 1983, c. 42, s. 1; 1985, c. 335, s. 1; 1987 (Reg. Sess., 1988), c. 910, s. 1; 1993, c. 539, s. 50; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 9, s. 2; 1999-64, s. 1; 2000-15, s. 1.)

Effect of Amendments. - Session Laws 1999-64, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date, inserted "Durham" in the second paragraph.

Session Laws 2000-15, s. 1, effective December 1, 2000, and applicable only to offenses committed on or after that date, inserted "Camden" in the second paragraph.

§ 14-111.3. Making unneeded ambulance request in certain counties.

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Ashe, Buncombe, Camden, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Haywood, Hoke, Macon, Madison, Polk, Robeson, Washington, Wilkes and Yadkin.

(1965, c. 976, s. 2; 1971, c. 496; 1977, c. 96; 1983, c. 42, s. 2; 1985, c. 335, s. 2; 1987 (Reg. Sess., 1988), c. 910, s. 2; 1989, c. 514; 1989 (Reg. Sess., 1990), c. 834; 1993, c. 539, s. 51; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 9, s. 3; 1999-64, s. 2; 2000-15, s. 2.)

Effect of Amendments. - Session Laws 1999-64, s. 2, effective December 1, 1999, and applicable to offenses committed on or after that date, inserted "Durham" in the second paragraph.

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 666 A BILL TO BE ENTITLED AN ACT MAKING IT A CRIMINAL OFFENSE TO OBTAIN AMBULANCE SERVICES FRAUDULENTLY IN HALIFAX COUNTY.

☒ 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 643
PROPOSED COMMITTEE SUBSTITUTE H643-CSSA-5 [v.4]

4/2/2001 2:40:02 PM

Short Title: Testimonial Privilege for Violence Victims. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.12. Communications with sexual assault counselors, rape crisis centers, and domestic violence programs privileged.**

(a) Definitions. – The following definitions apply in this section:

(1) Agent. – An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.

(2) Center. – A domestic violence program or rape crisis center.

(3) Domestic violence program. – A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims. The services provided may include, but are not limited to, crisis hotlines; safe homes or shelters; children of violence services; community education; counseling systems, intervention and interface; transportation and referral; and victim assistance.

(4) Domestic violence victim. – Any person alleging domestic violence as defined by G.S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for themselves, advice, counseling, or other assistance concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought,

for themselves, advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(5) Rape crisis center. – Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other assistance to victims of sexual assault and their families.

(6) Sexual assault. – Any alleged violation of G.S. 14-27.2, G.S. 14-27.3, G.S. 14-27.4, G.S. 14-27.5, G.S. 14-27.7, G.S. 14-27.7A, or G.S. 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(7) Sexual assault victim. – Any person alleging sexual assault, who consults an agent of a rape crisis center for the purpose of obtaining, for themselves, advice, counseling, or other assistance concerning mental, physical, or emotional injuries suffered as a result of sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought, for themselves, advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(8) Victim. – A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. – No agent of a center shall be required to disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services set forth in subsections (a)(3) and (a)(7). Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if the court finds, by clear and convincing evidence, a good faith, specific, and reasonable basis for believing that (i) the records or testimony sought contain specific information relevant and material to the issues to be determined, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. This provision shall not be used to provide for general discovery, or for the purpose of determining whether any nonspecified information exists in the records or testimony sought. If the case is in district court the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Before allowing disclosure, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall receive the records under seal and examine the records in camera and may allow disclosure of those portions of the records which the court finds contain information subject to disclosure under this subsection. After all appeals in the action

have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court.

(c) Duty to Report Abuse or Neglect. – Nothing in the section shall be construed to relieve any person of any duty pertaining to reporting abuse or neglect as required by law."

SECTION 2. This act becomes effective December 1, 2001, and applies to all actions and proceedings pending in the courts of this State on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 643 DATE 4-10-01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE HL643-CSSA-5[v.4]

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, lines 3-4

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

" COMMUNICATIONS WITH AGENTS OF RAPE CRISIS CENTERS AND DOMESTIC VIOLENCE PROGRAMS,"

and on page 1, lines 8-9 by rewriting the lines to read:

"§ 8-53.12. Communications with agents of rape crisis centers and domestic violence programs privileged.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 576

Short Title:	Abolish Alien. Affect./Crim. Conv.	(Public)
Sponsors:	Representatives Hackney; and Insko.	
Referred to:	Judiciary I.	

March 13, 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 of a spouse 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.

HOUSE BILL 576:
Abolish Alien. Affect./Crim. Conv.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 10, 2001	**Summary by:**	Rick Zechini
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 576 abolishes the common law torts of alienation of affections and criminal conversation.***

CURRENT LAW: The common law of North Carolina recognizes the civil action of alienation of affections. This cause of action is designed to protect the marital right of the affection, society, companionship, and assistance of the other spouse. In order to sustain a cause of action for alienation of affections, the plaintiff must show the following:

- The plaintiff and spouse were happily married and that a genuine love and affection existed between them;
- That the love and affection between them was destroyed; and,
- That the wrongful and malicious acts of the defendant brought about the loss and alienation of the love and affection.

Malice will be implied where the defendant's conduct is unjustifiable and actually caused the complained of injury. A sexual relationship between the defendant and the plaintiff's spouse is not a required element of an action for alienation of affections. The measure of damages is the present value in money of the support, consortium, and other legally protected marital interests lost by the plaintiff through defendant's wrong, and the plaintiff may recover for the wrong and injury done to his or her health, feelings, or reputation. Punitive damages may be awarded where the conduct of the defendant was willful, aggravated, malicious, or of a wanton character.

The common law of North Carolina also recognizes the civil action of criminal conversation. Criminal conversation is a tort action for adultery based on the violation of the fundamental right of exclusive sexual intercourse between spouses. In order to sustain a cause of action for criminal conversation, the plaintiff must show the following:

- The plaintiff was married.
- That the defendant had sexual intercourse with the plaintiff's spouse.

Alienation of affection is not a necessary element of an action for criminal conversation. The jury may consider the spouse's loss of consortium, mental anguish, humiliation, injury to health, loss of support, and loss of sexual relations in determining compensatory damages. Punitive damages may be awarded where the conduct of the defendant was willful, aggravated, malicious, or of a wanton character.

BILL ANALYSIS: House Bill 576 abolishes the common law torts of alienation of affections and criminal conversation.

EFFECTIVE DATE: This act is effective when it becomes law, but does not affect cases pending when the act becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 576 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 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 Committee on Judiciary I and Senate Committee on Judiciary II

Public Hearing on House Bill 141/Senate Bill 173

April 11, 2001
1:30 p.m.

A public hearing was held on Wednesday, April 11, 2001, at 1:30 p.m. in the Auditorium of the Legislative Building to hear from interested parties regarding House Bill 141/Senate Bill 173, AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachments I and II).

Representative Joe Hackney called the public hearing to order. He introduced Senator Kay Hagen, Chairman of the Senate Judiciary II Committee and stated that they would both serve as Chairs of the public hearing. He said that time would be limited to three minutes for each person desiring to speak.

Representative Ron Sutton was recognized for a brief explanation of the bill. Representative Sutton stated that the bill would provide that mentally retarded individuals would not be subject to the death penalty in North Carolina. He said that the bill would not protect one from being sentenced to life in prison without parole and that the defendant has the burden to prove mental retardation. Representative Sutton stated that the bill defines "mentally retarded" as significantly sub average intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. He said that a superior court judge would be required to make pretrial determination. Further explanation may be found in a bill analysis prepared by Ms. Susan Sitze, Committee Counsel, House Judiciary I Committee, (Attachment III).

The first speaker was Ms. Mel Chilton, North Carolina Victim's Assistance Network. Ms. Childton spoke in opposition to the bill and her remarks are attached, (Attachment IV). She also distributed a handout containing quotes from Dr. William Sloan, Wake Forest University, Dr. Frank Castleberry, Millbrook Psychological Association, and Dr. David Hattem, Dorothea Dix Hospital, (Attachment V).

Dr. Roger Moore, a clinical psychologist, spoke in support of the bill.

Mr. Wayne Uber, North Carolina Victim's Assistance Network, spoke in opposition to the bill.

Mr. Tom Fewel, an Orange County resident, spoke in support of the bill

Ms. Mary Howard Sutton, Governor's Advocacy for Person's with Disabilities, and a member of the study commission that recommended the bill, spoke in support of the bill. Her comments are attached, (Attachment VI)

Mr. Dick Adams, North Carolina Victim's Assistance Network, spoke in opposition to the bill.

Ms. Martha A. Geer spoke in support of the bill. Her comments are attached, (Attachment VII).

Mr. Howard Ange, a concerned citizen from Craven County, spoke in opposition to the bill.

Ms. Deborah Greenblatt, an attorney who represents persons with mental retardation, was recognized and spoke in support of the bill. She distributed a fact sheet, (Attachment VIII).

Reverend Mark A. Yates, Willow Spring, North Carolina, spoke in opposition to the bill. A copy of his remarks is attached, (Attachment IX).

Dr. Andrew Short, North Carolina Psychological Association, spoke in support of the bill. His comments are attached, (Attachment X).

Representative Hugh Holliman spoke in opposition to the bill

Mr. Richard Rosen, a professor of criminal law, spoke in support of the bill.

Mr. Tom Keith, District Attorney, Winston-Salem, North Carolina, was recognized and urged the committee to delay action on the bill until the Supreme Court rules on Death Penalty/Mental Retardation cases currently before them.

Reverend Diane Corlette spoke in support of the bill. She distributed newspaper articles regarding the execution of persons with mental retardation, (Attachment XI).

Mr. Colon Willoughby, Wake County District Attorney, stated that it was his opinion that the bill was un-needed, noting that the McCarver case was pending in the Supreme Court. He also noted concern regarding the testing procedure and the definition used for "mental retardation." He said the issue should be left to the jury.

Mr. Jim Maxwell, President, North Carolina Bar Association, spoke in support of the bill.

Ms. Sally Abril, North Carolina Council on Developmental Disabilities, spoke in support of the bill.

Ms. Bertie Frink, Shallotte, North Carolina, spoke in opposition to the bill. Her comments are attached, (Attachment XII).

Dr. Jim Phillips, Director of Psychology, Murdock Center, spoke in support of the bill.

Ms. Monica Worsham, Sharpsburg, North Carolina, spoke in opposition to the bill.

Mr. David Richard, The ARC of North Carolina, spoke in support of the proposed legislation. His comments are attached, (Attachment XIII).

Mr. Richard Taylor, North Carolina Academy of Trial Lawyers, spoke in support of the bill.

Mr. Bill Vetter, concerned citizen of Raleigh, NC, spoke in support of the bill.

The final speaker was Ms. Karen Burnette, Governor's Advocacy Council for Persons with Disabilities, who spoke in support of the proposed legislation.

A letter was in opposition to the bill was distributed by Mr. Richard A. Hale, a resident of Wake Forest, North Carolina. It is attached to the minutes, (Attachment XIV).

Senator Ballance, sponsor of the Senate version of the bill, thanked everyone for attending the public hearing.

The public hearing adjourned at 2:50 p.m.

Representative Joe Hackney
Chair, House Judiciary I Committee

Senator Kay Hagan
Chair, Senate Judiciary II Committee

Emily Reynolds Freeman
Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 141*

Short Title:	No Death Penalty/Mentally Retarded.	(Public)
Sponsors:	Representatives Sutton, Fitch, Luebke; Alexander, Barefoot, Blue, Bowie, Boyd-McIntyre, Earle, Goodwin, Hackney, Hall, Hensley, Hunter, Insko, Lucas, McAllister, Michaux, Miller, Oldham, Shubert, Wainwright, Weiss, Womble, and Yongue.	
Referred to:	Judiciary I.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. – An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 4

SENATE BILL 173*
Corrected Copy 2/20/01
Judiciary II Committee Substitute Adopted 4/19/01
Fourth Edition Engrossed 4/23/01

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. – An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The intelligence quotient test referred to in subdivision (a)(2) of this section must have been administered prior to the commission of the alleged crime. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree.

(f) In the event the court enters an order pursuant to this section finding that the defendant is mentally retarded, or is found not mentally retarded, the State or the defendant may appeal to the Court of Appeals as of right from the order. The State or the defendant shall have ten days to determine whether to take an appeal from the order finding that the defendant is mentally retarded. The taking of an appeal by the State or the defendant stays the effectiveness of the court's order and any order fixing a date for trial. Within six months of the enactment date of this subsection, the Supreme Court shall adopt rules to ensure that appeals pursuant to this subsection are expeditiously perfected, reviewed, and determined so that pretrial delays are minimized."

SECTION 2. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2005. Capital offenses; State has discretion as to whether to seek the death penalty.**

(a) The State may try a defendant capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. If a defendant indicted for first degree murder pleads guilty to the offense, the State may choose not to seek the death penalty, even if evidence of an aggravating circumstance exists. The State may accept a guilty plea from a defendant for first degree murder and agree as part of a plea bargain that the State shall not seek the death penalty for the capital offense, even if evidence of an aggravating circumstance exists.

The State may exercise its discretion to try a defendant noncapitally for first degree murder or to accept a guilty plea and not seek the death penalty at any time during the pretrial proceedings, the trial, or the sentencing hearing.

(b) If a defendant is convicted of or pleads guilty to first degree murder when the State elects not to seek the death penalty, then the court shall impose a sentence of life imprisonment without parole."

SECTION 3. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) ~~Upon~~ Except as provided in G.S. 15A-2005, upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in

which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f). Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

SECTION 4. G.S. 15A-2001 reads as rewritten:

"§ 15A-2001. Capital offenses; plea of guilty.

(a) Any person who has been indicted for an offense punishable by death may enter a plea of guilty at any time after his ~~indictment, and the~~indictment.

(b) If the defendant enters a guilty plea to first degree murder and the State chooses not to seek the death penalty as provided in G.S. 15A-2005, then the judge of the superior court having jurisdiction shall sentence the person to life imprisonment without parole.

(c) If the defendant enters a guilty plea to first degree murder and the State chooses to seek the death penalty, then the judge of the superior court having jurisdiction may sentence such person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before sentencing the ~~defendant,~~defendant in a case in which the State is seeking the death penalty, the presiding judge shall impanel a jury for the limited purpose of hearing evidence and determining a sentence recommendation as to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the defendant pleads guilty and the State seeks the death penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to defendants who have been tried and found guilty by a jury."

SECTION 5. This act becomes effective December 1, 2001, and applies to trials begun on or after that date.

HOUSE BILL 141:
No Death Penalty/Mentally Retarded

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Sutton, Finch, Luebke
Date:	March 20, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 141 provides that a mentally retarded person convicted of first-degree murder shall not be sentenced to death.***

CURRENT LAW: Current law does not provide an exemption from the death penalty for mentally retarded persons. G.S. 15A-2000(f)(2) and (6) provide two mitigating circumstances which may be potentially applied to mentally retarded persons in considering whether a particular defendant should receive the death penalty. The current mitigating circumstances that may apply are that: "the capital felony was committed while the defendant was under the influence of mental or emotional disturbance" and/or "the capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was impaired".

BILL ANALYSIS: House Bill 141 would prohibit a mentally retarded person from receiving the death penalty for first-degree murder.

The bill defines "**mentally retarded**" as significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. "**Significantly subaverage intellectual functioning**" is defined in the bill as an intelligence quotient (IQ) of 70 or below on an individually administered standardized IQ test.

Under the provisions of the bill the defendant may make a motion prior to trial for a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

The bill becomes effective December 1, 2001 and applies to trials begun on or after that date.

BACKGROUND: This bill is a recommendation of the Legislative Research Commission.

Date: April 11, 2001

To: Representatives and Senators of the General Assembly
From: Mel L. Chilton, North Carolina Victim Assistance Network, Victim Resources Director

Subject: House Bill 141 (No Death Penalty/Mental Retarded)

Thank you Representative Hackney for your sense of fairness in allowing the opposing view of this bill to be heard. I would like to express my strong opposition to HB141.

Representatives and Senators, I appeal to your sense of right and wrong. Please do not repeat the history of the Supreme Court in the 1970's. Representative Sutton stated in your last Committee Hearing that mentally retarded people with an IQ of around 70 probably know right from wrong, they just may not appreciate the consequences of their actions. I have been appreciating the consequences of a murderer for 26 years of my life. Our family was destroyed and my life was changed forever. The life sentence that was given to the murderer also sentenced my family. Today, I speak on behalf of those who are going to be re-victimized by these actions.

On May 19,1975 my mother was strangled to death by an inmate that was currently serving a **life** sentence for a 1969 rape conviction. She had been employed just three weeks prior as a dental assistant. She had gone to work in state government seeking the security of health and retirement benefits not offered in the private sector. That afternoon my father sat watching the 6:00 PM evening news waiting for her arrival when my mother was wheeled out of the prison gate on a gurney under a sheet.
My father never recovered. Four years later, he drove head on into another vehicle ending his life and that of an innocent couple on the way to a NC State Football game. Four years later, my only sibling, Ted, 28 years of age drove into a tree on Old Stage Rd. at midnight ending his life.

Eliminating the death penalty is ultimately the goal of this bill. Executing a truly mentally retarded person is not what I or any victim wants. This bill is an oversimplification of a very complex determination. The safeguards are in place to protect the innocent. I support our criminal justice system as it relates to this issue and have found no evidence of a mental retarded person being executed. The McCarver case proves our system is working. We have been researching mental retardation issue and it is much more complex issue than a magic number IQ of 70. (Handouts: Quotes from NC Professionals)

Offenders serving a life sentence <u>do</u> gain access to innocent citizens again. The Department of Correction custody levels provide murderers with the opportunity to move from maximum to minimum custody in a few short years. The criminal that murdered my mother received a life sentence in 1969 was placed in maximum custody and was a minimum custody inmate when strangled my mother in 1975. He was sentenced to death, then re-sentenced in 1985. He has been eligible for parole since 1987. Each year my family has to endure the fear of his release and wonder who will be his next victim.

Dr. William Sloan, PhD in Clinical Psychology
Wake Forest University
Interview on 3/29/01 @ 9:00am

1. How reliable is standard IQ testing? (The Weschler and Stanford-Binet). I believe the Weschler tests are most reliable. There are three different versions, one for young, preschool-aged children, one for school age children, and one for adults. It is necessary to retest people because of the minute differences between the tests and because of the fact that IQ may fluctuate. For instance, if an abused child is tested while still in the abusive home, they may have a very low IQ. After being removed from the abusive home, the child may score up to 25 points higher on an IQ test. Another example would be testing a student about to start Harvard law school that has an IQ of 105. After law school, the same student tested 132. There are many factors that contribute to an IQ score. If one has a stable emotional life, they are more likely to have a higher IQ. The same person's IQ may go down if emotional balance is no longer in equilibrium. Those who have been "defined" on the IQ scale as being mentally retarded tend to have IQ's that remain constant.

2. Is an IQ test alone enough to label one as being mentally retarded? If not, what other tests can be used? An IQ test is not generally enough to be used alone to determine one to be mentally retarded. There are two other factors that may be taken into consideration. Those are 1) Were the mental deficiencies present at an early age? 2) Is there a definite problem with social adaptability (life skills)? One must utilize a pattern of scores over a period of time to come to the conclusion of mental retardation.

3. What, in your opinion would be an IQ range in which one can still be mentally retarded and still be able to reason and be morally culpable for a crime? This particular IQ range must be viewed as a continuum. There is no arbitrary number that determines when a person may be able to reason and is morally culpable for a crime. It is true that the lower the IQ under 100, the more likely it is that one is not able to reason in a particular situation. There are quite a few issues that would factor into one's moral and belief systems and ability to know right from wrong. Most morals and reasoning skills are learned and depend on one's particular life experiences.

4. What, in your opinion do you think of the House Bill? Is the scope too narrow? Too wide? I'm not completely familiar with the entire Bill. However, I believe the courts need to take EVERY specific case and circumstance into consideration when determining whether or not one is mentally retarded and unable to understand the implications of their crime and the court proceedings. There are so many differences amongst people who have the same "magic" IQ number. It is for this reason that we need to conduct more tests, examine life circumstances, and not simply rely on one number (IQ) to determine one's cognitive abilities (mental retardation).

Dr. Frank Castleberry
Ph.D. in Psychology
Millbrook Psychological Associates
Raleigh, NC
Interview on 3/30/01

1. How reliable is standard IQ testing? These cognitive tests are highly reliable; I use them on a regular basis. Though these tests are fairly accurate in defining one's cognitive abilities, they are not a determinate of personality or the ability to reason. IQ can change over time depending on one's life experiences. Retaking these tests almost always guarantees a different score.

2. Is an IQ test alone enough to label one as mentally retarded? If not, what other tests or factors can be taken into consideration? The IQ test is certainly a factor, but cannot be used alone to gauge the mental capacity of an offender. The courts must also take into account the offender's efficacy in daily living as well as in social skills. Successful operations in these two areas often garner a more sophisticated moral understanding of the crime. It is also important to know that it is not very effective to use an IQ score from one's childhood. Successful IQ testing must be done periodically to get an average number.

3. What, in your opinion, would be an IQ range in which one can still be mentally retarded and be able to reason and be morally culpable for a crime? There is no "cut and dried" number. It is very important to take every case into consideration and to examine the lifestyles and past life experiences of the offender. These experiences often help define one's moral character or lack thereof.

Dr. Robert Carson
Ph.D. in Psychology
Duke University
Taken from email sent on 3/28/01

"There is no help I can give, precisely because the question is framed in a moribund style that should have been given up by legislators decades ago. There is, in fact, and despite the DSM, no way objectively and reliably to determine so-called mental retardation. That is the fundamental issue, which nobody wishes to address because we as a people like 'automatic' solutions to complex societal problems. Unfortunately, most lawyers I know have not the slightest insight into the subtleties involved here."

Dr. David Hattem
Forensic Psychologist
Dorthea Dix Hospital
Taken from email sent on 3/28/01

The following are Dr. Hattem's opinions on mental retardation and the death penalty:

"The question of whether one knows that a crime is morally (and/or legally) wrong is one of the two parts of the definition of 'insanity' from the legal standpoint. The other is whether the person understood the 'nature and quality' of the act, for example, they did or did not understand that pulling the trigger would cause a bullet to be fired which could harm someone. These parts comprise the McNaughton standard, which is the controlling standard in North Carolina and many other states. This standard further states that the above conditions must be met as a result of a 'mental disease' or 'defect of the mind.' Historically these terms have been interpreted to mean psychosis and mental retardation respectively. In North Carolina, since the statutes were changed to make the definition of 'insanity' clearer, there have been only 26 defendants found Not Guilty by Reason of Insanity. In all of these cases the finding of legal 'insanity' was based on psychosis and not on mental retardation, even though some of these patients are retarded as well as psychotic. Given this precedent there is a big disincentive for lawyers to raise mental retardation as a basis for an insanity plea in North Carolina."

"I have evaluated a number of defendants who had intelligence scores in the mild mental retardation range who I thought clearly understood that what they were doing was morally and/or legally wrong. Instead, I have offered testimony as to the mitigation value of mental retardation in terms of deliberation and impulse control. The outcomes have varied case by case but in general judges and juries find the presence of mental retardation to be pretty important as a mitigator."

"You raise a good point with the question about reliability of IQ test scores. Standardized intelligence tests have published values associated with their reliability, and generally you will see these reflected in a written report as a 95% confidence interval around the score (i.e. 'there is a 95% likelihood that the true score lies within the range of 68 to 73'). The WAIS-III is the gold standard and has a 95% range of 5 points for the full scale IQ. Unfortunately people continue to give other intelligence tests and then testify in court about them without referring to this confidence interval. This is the one reason you get 'dueling experts.' Another reason is that defendants who face a very serious penalty are sometimes highly motivated to do poorly on testing, and will show a wide variation in their scores from what you would expect based on observing their actual abilities."



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252

Good Afternoon! I am Mary Howard Sutton and I call Kinston home. I am delighted to have the opportunity to say a word or two to you this afternoon. Have you ever made a decision and then wondered why you made that decision? I have. In fact I had decided to speak before this committee and then I had time to think about making that decision and wondered what it is that I have to offer.

My education is not related at all to working with retarded persons. My job as an insurance agent is not related to working with retarded persons. I am only a North Carolina business owner who advocates for the rights of disabled persons in North Carolina. There are various boards, commissions and committees across the State on which I am a member advocating for the disabled. In fact, I was a member of the LRC on Capital Punishment-Mentally Retarded and Race Basis.

My involvement with the mentally retarded covers many years and is close to my heart. Until his death last month I was guardian for an older gentleman who had called Caswell Center, one of the five Mental Retardation nters in North Carolina, his home for 45 years. Also, my husband Tommy and I are guardians for his brother oy who has Down Syndrone. Leroy called Caswell Center his home for over 30 years and is currently living n a group home in the community.

So what do I have to offer to you.... personal one on one time with retarded persons. So what do I want to tell you....I am opposed to capital punishment for retarded individuals with an IQ below 70. Why? That question, to me, boils down to several concerns which come from observing and working with retarded persons over a period of many years. Does every retarded person understand the long range consequences of his actions? In my opinion the answer is a resounding no! Many retarded persons can be taught what action is correct and what is incorrect, what is proper and improper in certain situations. But to understand the long range consequences of an inappropriate action, I believe, is beyond the ability of some retarded persons.

A characteristic, which I have observed, is that often a retarded person will try to please "the person in charge". He will agree with that person thinking that it the right thing to do, but with little or no understanding of why he is agreeing with the person in charge.

To me, the non-professional, some one's IQ is not just a verbal test. It encompasses his adaptive abilities for living and prospering in a community as an independent person.

So as I said in the beginning, I am not the person who can answer your technical questions. I can only tell you what I know from years of personal one on one interaction with retarded persons whose range of ability runs the gamut of the IQ score. In my heart I do not think that a person with an IQ of 70 or below should be executed in the State of North Carolina. Thank you for your time.

ary Howard Sutton
ril 11, 2001

REMARKS OF MARTHA A. GEER

I am here to talk with you about Earl Washington. Earl is a living example of what this bill is about. He demonstrates that the bill is not talking about a hypothetical problem – a problem that the current system already addresses. And the bill does not simply provide another weapon in the arsenal of a defense attorney. Earl's story shows that we need this bill.

Earl is mentally retarded – he has a 69 I.Q. His mental retardation was documented from the moment he set foot in school. He was in special education classes until he dropped out in the 9th grade.

Earl was convicted and sentenced to death for a brutal rape and murder of a 19-year-old mother – the murder took place in the presence of her toddler and infant. Although the jury was told all about his mental retardation and was able to see him testify, they found the evidence so compelling and the murder so brutal that they convicted him after deliberating for less than an hour and sentenced him to death after only an hour and a half.

Two months ago, Earl Washington walked out of prison as a result of a pardon from Governor Gilmore of Virginia. DNA testing had completely exonerated him and implicated a man in prison for another rape.

Earl was innocent. He had come within 5 days of being executed – even though there was no physical evidence to tie him to the murder. The fingerprints did not match; the footprint did not match; before DNA testing was done, the blood work was inconsistent with his blood type. I was one of the volunteer attorneys who worked to get the stay of execution.

What was the evidence that caused Virginia nearly to put an innocent man to death? His confession. And this confession was a direct result of his mental retardation. You will hear testimony that people with mental retardation frequently act with two goals: to please others and

to avoid looking stupid, to avoid looking like a "retard." That was what Earl did and it nearly cost him his life.

Earl was picked up on an unrelated crime. The police started asking him about other crimes, including the murder of Rebecca Williams. He confessed to all of them. With the exception of the Williams crime, the police had to toss out all of the other confessions because they were inconsistent with the evidence or because eye witnesses confirmed that he was not the person who had committed the crime.

His confession regarding Williams stood. If you look at that confession, you will see why executing people with mental retardation creates the risk of executing an innocent person. Earl wanted to please the police; he wanted to give the "right" answer. And, he did not want to look stupid. When they asked him forcefully, "Did you kill that girl in Culpeper?" He sat silently, dropped his head, said "yes," and then started to cry. He himself did not know any details about the crime. When the police questioned him, they either asked leading questions or suggested the answer.

For example, after they had talked to him for hours without taping the conversation, they then did a tape recorded and transcribed confession. They asked him whether his victim was white or black. He answered, "black." They then waited a few questions and asked the question again, "Was Rebecca Williams white or black?" If you are asked the same question twice and there are only two possible answers, you must have gotten the answer wrong the first time. So, what did Earl say when asked the second time: "She was white."

I am not blaming the police. They did not know that he was mentally retarded. Earl, like others in his position, does a good job of covering it up. He is quiet, polite, and says "Yes, sir" and "No, sir" – although, he for the most part has learned to answer people "yes." That makes

him look less stupid. He signed the confession even though he could not read what it said – the police did not know that. Think about how easily children are led along in questioning. Earl is essentially a child, but does not look like one.

All of the courts, state and federal, that reviewed his death sentence affirmed it because of that confession. Although even the Fourth Circuit believed that Earl's trial lawyer had not been adequate, it refused to order a new trial – because of the confession, the court believed that any error was harmless. Earl would have been convicted anyway. Our own Judge Dickson Phillips – former Dean of Carolina's law school – who sat on the Fourth Circuit panel has said that he felt something was very, very wrong with the case, but that he was legally bound to uphold the sentence.

In 1994, then Governor Wilder saw the first DNA tests, which suggested that Earl was innocent. He felt, however, that he could not set Earl free – again because of the confession. It was only after DNA technology evolved to the point that it could completely exonerate Earl and point to another probable murderer that Governor Gilmore released him.

I met Earl in 1985 and learned first hand what it means to be mentally retarded and facing the death penalty. The Virginia Supreme Court had already affirmed his conviction. I was meeting with another death row inmate on another matter. He said, "Earl Washington has a 69 I.Q., he has an execution date two weeks away, and he doesn't have a lawyer. What are you going to do about it?" I called a more senior lawyer and asked, "What do I do?" He had me meet with Earl to get as much information about his background and his trial.

So, I sat in a conference room on opposite sides of a table. Earl was then 23 years old, more than 6 feet tall and very muscular. I was 5'4" and could have passed for being 18 years old, although I was 26. Earl was terrified of me. He could barely answer my questions – and I

was lucky if he said more than "yes" or "no." I asked him what I thought was a very simple question: "What do your parents do for a living?" He gave me an agonized look and started rubbing his hands up and down his face over and over. Finally, a woman who was with me, who had previously worked with Earl, asked, "Are they farmers?" Earl beamed – the broadest, most relieved smile came over his face, and he said "yes."

A psychiatrist examined Earl for us and he was no bleeding heart liberal. He had spent his career in the armed forces. He told the court that Earl was so agreeable that had the electric chair broken down on the night of his execution, he would have helped them fix it.

How can a man who is scared of his attorneys, who will say whatever is necessary to please the questioner and to avoid sounding stupid, who has trouble answering basic questions, and who does not know what words like "rape" mean help his attorneys or successfully negotiate our judicial system? Should we be putting those people to death? Are we willing to take that risk?

We cannot leave it up to the jury. This case shows why. The jury knew about his mental retardation, but chose to believe the confession anyway. The mental retardation did not affect sentencing. Earl's lawyers put him on the stand so the jury could see what he was like – the prosecutor made mincemeat of him. In addition, because of his mental retardation, Earl was simply not in a position to help his attorneys prepare his defense.

I have heard a lot of people say that Earl shows that the system works. That is hogwash. The only reason that Earl is alive today is that there was DNA evidence and his lawyers managed to keep him alive until DNA technology advanced to the point that it could prove him innocent. With the deadlines that we have today in capital cases, Earl would be dead. And, what happens in a case without DNA evidence? When you have a person with mental retardation, the

conviction and the sentence are not reliable.

Earl is now living in Virginia Beach under the supervision of an organization that helps people with mental retardation. He recently got to go to the Food Lion to learn how to grocery shop. And he had breakfast at an IHOP.

People like Earl should not be put to death. One day, inevitably, we will kill someone with mental retardation who is innocent. The risk is just too great.

PEOPLE WITH MENTAL RETARDATION AND CRIMINAL JUSTICE

Characteristic	Consequences in Criminal Justice Context
Stigma: One of the worst insults a child can heave to another is to call him retarded. For people with mental retardation, the importance of not looking dumb or retarded cannot be overstated. This is especially true of people with IQ scores between 55-70 because they have the awareness to have been stung by early name-calling. For such a person, the most important thing in public life is to "pass" as normal, and life has taught that it is easiest to do this by bluffing greater understanding than you have and by saying "yes" to people when in doubt.	**Looking for Yes:** The person has learned to read people for the "right"answer to questions they don't understand. If the interrogator in any way infers the answer they want, the person will give it to them. **Bluffing Understanding:** If you ask the person "do you understand this?" They will search for <u>any</u> meaning of the words that they might possible guess and will answer "yes" even when they do not understand at all. **Failure to Mitigate:** The person has difficulty understanding that telling people that they are not smart can be helpful to them in some way. Avoiding the sting of being labeled is the primary motivating factor, more important than avoiding punishment.
Deference to Authority: People with mental retardation have learned to trust others to help them get by in life. These "authority figures" might be parents, siblings, teachers or co-workers. It might be anyone who has been nice to them for any reason. Depending on the person's background and life exposure, they might also be local hoodlums who have standing in the neighborhood or who seem "smart" to the person.	**Being Easily Influenced:** Whether the "authority figure" is a good guy or a bad guy in the eyes of the law, the person who gives attention to the person with MR and appears to be helping him will receive deference and trust. It will never occur to the person with mental retardation that someone is using him (as in the case of the official bad guy) or making false promises to him (in the case of the police interrogator). He will try his best to do or say what he views as important to his smart friend.
Abstract Thinking and Language: Most people with an IQ between 55-70 can get along well understanding and communicating about concrete ideas and things. That is why people can do well in jobs like fast food and grocery bagging, because the work does not require abstract thinking. Most conversation among people of normal IQ however goes between abstract and concrete ideas without notice. For the person with MR, it is as if in mid-conversation, you slipped into Hungarian, then slipped back into English. They will pick up what they can, get the gist of the conversation and try to participate. Because of the reluctance to ask for explanations, the person will risk misunderstanding before asking for help.	**Criminal Justice Ideas and Language:** The language used by law enforcement, lawyers and judges, and the ideas expressed by that language are highly abstract. "Waiver of Rights" for example represents a set of relationships and actions that have serious consequences but which are not concretely described by the term. To make matters worse, the words "waive" and "rights" have concrete meanings to the unknowing ear in "wave" and "right". Thus, the person with mental retardation will waive his rights thinking he is waving his hand before he will admit that he does not understanding what is being talked about. This lack of understanding is real. Because of the prevalence of abstraction in criminal justice and the person's reluctance to admit lack of understanding, the consequences of misunderstanding can be severe.

This fact sheet was prepared by Deborah Greenblatt of Carolina Legal Assistance.

Post Test

From the colloquy between Detective Crawford and Billy Moore in S. v. Moore, I made a list of words that I thought would present comprehension problems for someone with mental retardation. I wrote the words out on a two sheets of ruled yellow paper and gave the sheets to someone I know who has mild mental retardation. This person has an IQ of 62 and can read and write. This person maintains a job in the mainstream economy and can converse with you about many topics (including ACC basketball) in a way such that you would not necessarily identify them as mentally retarded although you would know that they were not a highly educated person.

I asked this volunteer to copy each word on the same line next to where I wrote the word. My instructions were to then, underneath each word, tell what the word meant. If they did not know the meaning of the word, my instructions were to write "I don't know".

The attached sheets are copies of that person's responses. Res Ipsa Loquitur!

Deborah Greenblatt

renewed motion for the appointment of a psychiatrist to assist in the preparation of his defense. We agree.

Before denying defendant's renewed motion for the appointment of a psychiatrist, Judge Burroughs had conducted an extensive hearing on defendant's earlier motion to suppress his confession. At this hearing Gastonia Police Department Detective Fred Crawford recounted the two occasions on which he questioned defendant. The first was on the afternoon after the assault on G.G., 12 October 1986, when defendant admitted to being in G.G.'s neighborhood on the evening of the assault, but denied entering her home or attacking her. Detective Crawford declared that he advised defendant of his rights by reading from a standard form containing *Miranda* warnings and a waiver of *Miranda* rights. The defendant signed the form and agreed to have his photograph taken. Detective Crawford took defendant home.

Detective Crawford next questioned defendant on 15 October 1986. He went to defendant's residence and, pursuant to a warrant, arrested him for the first degree rape of G.G.. Detective Crawford took defendant to the police station and reminded him of his rights by reading from the same standard form used three days previously. The colloquy between Detective Crawford and defendant, which was read in its entirety at the suppression hearing, went as follows:

Detective Crawford: Mr. Moore, we previously went over your rights and I would like to go over them with you again. Answer yes or no if you understand. You understand that you have a right to remain silent?

Defendant: Yes, sir.

Detective Crawford: Anything you say can and will be used against you in court?

Defendant: Yes.

Detective Crawford: You have a right to talk to a lawyer for advice before I ask you any questions and have him with you during questioning?

Defendant: Yes.

Detective Crawford: If you cannot afford a lawyer, one will be appointed before any questioning if you wish?

Defendant: Yes, sir.

Detective Crawford: If you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering any time until you talk to a lawyer.

Defendant: Yes.

Detective Crawford: Do you understand each of these rights that I have just explained to you?

Defendant: Yes, sir.

Detective Crawford: Do you each of these rights that I have just explained to you? (sic)

Defendant: Yes, sir.

Detective Crawford: Mr. Moore, you previously stated that you cannot read. I have got to read this paragraph and I am going to read it for you. (sic) If you understand that, answer yes. The paragraph states: "I have read a statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand what I am doing. No promises or threats have been made to me. No pressure or coercion of any kind has been used against me." Do you understand this paragraph?

Defendant: Yes.

Detective Crawford: Okay, with that paragraph in mind, are you still willing to talk to me and answer questions I might ask you, knowing that you have the right to have a lawyer with you?

Defendant: Yes.

Detective Crawford: Are you willing to talk with me without a lawyer present at this time knowing full well you have the right to have one at this time?

Defendant: Yes.

Detective Crawford: Is this your signature there?

Defendant: Yes.

Defendant then made a statement in which he admitted assaulting G.G. on her back porch.

APPOINTED Appoited

you can get in trouble

PARAGRAPHS Paragraphs

Taking Dicheaps

MY RIGHTS MX RiGHTS

having a good job

PRESSURE Pressure

is stressout

COERCION Coercion

I DO NOT KNOW

REMAIN Remain

Quit

ADVICE ADVICE

having good manners

THE RIGHT TO REMAIN SILENT

Do not make noise

USED AGAINST YOU IN COURT

I DON NOT know



New Life Covenant Church

901 Old Fairground Road
Willow Spring, North Carolina 27592
Phone (919) 894-7321 Fax (919) 894-2433
Child Development Center (919) 894-2798

Rev. Mark A. Yates ***Pastor***

March 13, 2001

Senators and Representatives of the General Assembly of North Carolina
Legislative Building
Raleigh, NC 27601-8740

Dear Senators and Representatives,

I would like to thank you for your continued fight for justice for the citizens of North Carolina. I am greatly concerned at the effort of some groups in our state trying to set a moratorium on the death penalty. It is especially upsetting when some of these groups use the Bible and totally misrepresent what the Scripture says concerning the death penalty.

As a Christian minister and a citizen who loves the people of our state, I would like to share some Biblical facts that support societies having a death penalty.

When someone is murdered, the community is obligated, whether it feels like it or not, to step up to the plate and respond. By doing so, the community declares that murder is absolutely evil and absolutely intolerable, period!

God stated this to Moses when He gave Moses the Ten Commandments. God said; "You shall not murder." (Exodus 20:13) The Hebrew word (Ratsach) clearly reflects to wrongful and unlawful killing, which is totally different from the killing that occurs in capital punishment, war, and self-defense which are permitted in the Bible.

Even our judicial system makes distinctions between murder and manslaughter based on the degree of premeditation, negligence, or intent. Our response is different when we hear that someone close to us was brutally murdered rather than accidentally shot. One sickens, shocks, and frightens us, and the other saddens us. The point is that even our Creator declares that all killing is not equal.

God declared in Genesis 9:6; "Whoever sheds man's blood, By man his blood shall be shed; for in the image of God He made man." Not only is murder an attack upon man, it is also an attack against God, the Giver of life.

The Bible states a number of reasons for societies to have capital punishment as the consequence for murder. As retribution and deterrence, capital punishment reflects God's desire; "you shall destroy the evil from among Israel" (Deuteronomy 17:12). God also stated that "blood defiles the land" (Numbers 35:33). Murder is so vile that just as Abel's blood cried out to God, the cry of innocent blood can only be silenced by executing the murderer.

Capital punishment is mandated in each of Five Books of Moses (Torah). Obviously, this was an important issue for God and it should also be with us. The point is that one cannot equate capital punishment with murder.

When God said not to murder, He knew that murder embodied evil so terrible that it defiles the human race. In a world where moral upsidedownness seems to rule, we cannot allow ourselves, our nation, our state, and our communities to be blinded by the lack of respect, disdain and contempt for the laws of our land and for human life.

Every citizen must proclaim that murder is absolutely wrong and it will not be tolerated now, next week, or 100 years from now.

As a member of faith ***for*** the death penalty, I state what so many followers of God who understand what the Bible clearly teaches, that if someone has no regard for human life, the consequence for that someone must be the forfeit of his own life by death.

To each Senator and Representative, I appreciate your allowing me to share with you some facts that are often overlooked from the Bible. If I can be of further assistance to you or to other leaders in our State, please feel free to contact me at anytime.

Sincerely,

Mark Yates

Reverend Mark A. Yates

Dear Senators and Representatives;

I. Thank you for allowing me to share.

II. A few of my concerns about the moratorium.

1. We already have good laws in place that are very clear about murder and it's consequences.
2. We have one of the best appeal systems in the country.
3. The jury is given the facts about a defendants "mental" condition before sentencing.
4. A moratorium sends the message to our society life has no value. That's the wrong message.
5. It grieves me that politics is trying to force a 70 or below intelligence as a standard for exception from capital punishment. When people know right from wrong they should be held accountable for their actions.

6. The Bible supports the death penalty.

As a Christian minister and a citizen who loves the people of our state, I would like to share some Biblical facts that support societies having a death penalty.

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When God said not to murder, He knew that murder embodied evil so terrible that it defiles the human race. In a world where moral unsidedownness seems to rule, we cannot allow ourselves, our nation, our state, and our communities to be blinded by the lack of respect, disdain and contempt for the laws of our land and for human life.

III. The Real Issue.
1. We must be a society that stands for justice, righteousness and morality.
2. We must stand up for the value of what is right.

Every citizen must proclaim that murder is absolutely wrong and it will not be tolerated now, next week, or 100 years from now.

If someone has no regard for human life, the consequence for that someone must be the forfeit of his own life by death.

I appreciate your allowing me to share and I urge you to stand against this moratorium.

Sincerely,

Reverend Mark A. Yates

Andrew Short, Ph.D., Co-Chairman
Legislative Committee, North Carolina Psychological Association

April 11, 2001

The North Carolina Psychological Association supports the passage of House Bill 141 which would prevent the execution of individuals with mental retardation.

Mental retardation develops before age 18, and involves extremely low intelligence as well as a limited ability to manage daily life functions independently.

- Individuals with mental retardation are impaired several areas of ability, not simply intelligence.

- Being mentally retarded is not the same as being a "slow learner." It is a more extreme condition. While about 20% of the population can be referred to as "slow learner", only the lowest 2-3% of all people can be classified as mentally retarded.
  Those who fall below this level, below an IQ of 70, have a very significant mental disability.

People with IQ's of 70 or below have a very significant mental impairment.

- The IQ standard for mental retardation is a very conservative standard. It was established to limit the number of people in the category of Mental Retardation in the schools.

- People with mental retardation may have a basic understanding of right and wrong but don't appreciate the significance, and cannot reason through the consequences, of their actions as well as people with normal intelligence.

- They are less able to consider the consequences of their actions as they carry them out.

People with mental retardation have several characteristics that make them particularly vulnerable in the legal system.

- They are more likely than other people to be susceptible to the influence of others: They may do things to win approval that get them in trouble. Once in the legal system, they may agree to things they don't understand, or admit to acts they didn't commit, simply to please others.

- Because of limits in their comprehension and memory, they may be less to be effective in helping their attorneys.

Standardized intelligence, or IQ, tests are developed though use on thousands of individuals. They are reliable and scientifically validated.

- Attempts may be made to fake IQ tests. There are methods that psychologists can successfully use to detect faking. These include analysis of test responses, specific tests to detect faking, and an understanding of the behavioral patterns of people with mental retardation.

- HB 141 also guards against faking by requiring evidence of impairment in daily living skills and evidence of impairment before the age of 18.

Adaptive functioning is measured through interviews with third parties, such as family members or others who have observed the individual closely, as well as direct testing and observation.

- Tests of adaptive functioning are reliable and validated; they yield scores, not just impressions.

- The kinds of skills assessed in adults include the ability to keep a job, manage money, prepare food, manage personal heath care, consider safety issues, and travel independently in the community.

There is no cure for Mental Retardation.

- Treatment mostly involves training people with Mental Retardation to teach them as many basic living skills as possible. It will not improve their reasoning and memory skills. They continue to be significantly handicapped.

ATTACHMENT XI

Who won the Florida elections?

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charlotte.com The Charlotte Observer

Published Sunday, April 8, 2001

E-mail this story to a friend

U.S. justice is put to shame when we execute the uncomprehending

By TOM TEEPEN
Cox News Service

It is distinctly odd that the U.S. Supreme Court should even be taking up two cases questioning the execution of the retarded.

If there can be any case for execution, the case must be founded on a moral bedrock that holds only the knowing and the capable to the ultimate account for capital crimes. Yet here we are, one of only a handful of nations - and those are embarrassingly shabby company - that still kill the retarded and juveniles.

Only six nations since 1990 have executed offenders for crimes committed as juveniles - us, of course, and Pakistan, Iran, Nigeria, Saudi Arabia and Yemen. Sorry if this is not P.C., but that is not a roll call of enlightened societies.

Of the 38 states with capital punishment, 23 execute for juvenile crime, with no apparent widespread revulsion at the idea. Indeed, we seem ever keener to treat our erring children as adult criminals, even, as in a recent Florida case, middle-school kids.

Perhaps it is because, in contrast, there's evidence that opinion is shifting away from executing the retarded that the Supreme Court is revisiting that issue.

The justices ruled only 12 years ago that it was constitutionally just fine to kill the retarded. At the time, only two states forbade the practice, but now 13 do and Congress has barred such executions for federal crimes.

The court recently heard the claim in a Texas case that juries should be

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told clearly they can take a convict's retardation into account in deciding the sentence. The defendant in that case has the IQ of a 7-year-old. In a pending North Carolina case, the justices will reconsider the very constitutionality of executing the retarded.

Executions do not deter crime. Their knowledgeable supporters no longer even bother to try to make that case. The evidence is definitive.

If, then, the death penalty is to be anything more than simple revenge - a state-sanctioned act of theatrical bloody-mindedness - it must be rooted in a moral argument.

Justice is shamed when we kill the uncomprehending and the incompetent in its name.

Tom Teepen is an Atlanta-based columnist for Cox Newspapers. Write him by e-mail at teepencolumn@ coxnews.com.



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OPINION

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OUR VOICE

Spare them

• It's wrong to execute mentally retarded killers.

Killers who are mentally retarded shouldn't be executed for the same reason that killers who are children shouldn't be executed: They lack a fully developed sense of right and wrong. A bill in the North Carolina General Assembly establishes a good standard: Any punishment but death for a mentally retarded person convicted of murder in the first degree.

The bill may prove moot if the U.S. Supreme Court rules that execution of the mentally retarded amounts to cruel and unusual punishment and is thus unconstitutional. No one knows what the court will rule; Americans may be in for a surprise. It certainly was a surprise when the court recently halted the execution of Ernest McCarver.

McCARVER

McCarver was convicted of first-degree murder in the death of a 71-year-old man in Cabarrus County in 1987. Before his trial, McCarver's IQ was determined to fall between 70 and 80. According to the bill, which sets 70 as the threshold, that wouldn't have been low enough to save him. (A subsequent test put McCarver's IQ at 67.)

Mentally retarded killers are a menace to society. Justice and public safety demand that they never walk the streets again. But justice also demands that a person with the mental age of 12 or lower shouldn't face the same punishment as a killer whose mind is evil but otherwise adequate.

A mental hospital or a jail cell should be the destination of mentally retarded killers, not the execution chamber.

LETTERS TO YOUR VOICE

We welcome letters. Please send letters by mail, fax or e-mail (no attachments). Include your name, address and phone number. Preferred letters are 250 words or fewer. We edit letters for length and clarity, we publish no more than one letter per writer per month, we publish only original submissions, and we publish no poetry.

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fayettevillenc.com FAYETTEVILLE ONLINE OPINION

Thursday, March 29, 2001

Age

A row over executions and morality

The U.S. Supreme Court will use a North Carolina case to settle the question of whether having the mind of the child is, under law, tantamount to *being* a child. It's time for this issue to be settled.

The justices will review an appeal by Ernest McCarver to decide if it's unconstitutional to execute a person who is mentally retarded. McCarver's lawyers say he has the mind of a 10-year-old.

Earlier this month, justices intervened just hours before he was to be put to death. McCarver had already been served his last meal, and Gov. Easley had already denied McCarver clemency. The Supreme Court will decide if he will be served another last meal.

A past Supreme Court decision ruled that children 15 or under should not be executed because they are intellectually immature. The justices will be arguing whether the same reasoning applies to the mentally retarded.

On Tuesday, the Supreme Court heard arguments in a separate case involving a defendant on Texas' death row who has the mental capacity of a 7-year-old. The man spends his day coloring, and he still believes in Santa Claus.

But their focus in the Texas case will be whether juries should be allowed to consider a defendant's intelligence during sentencing.

McCarver's case, however, goes directly to the constitutional issue. Is it cruel and unusual to execute a person who has the impulse control and reasoning skills of a child?

Thirteen of the 38 death penalty states believe it is wrong to execute a person with the mind of a child. McCarver's lawyer will be arguing that society's standards of decency have changed since the justices decided in 1989 that the Constitution doesn't forbid executing the retarded. More Americans believe that it is wrong.

The crime McCarver was convicted of committing was ugly and violent.

He stabbed and choked a cafeteria coworker to death.

But the case isn't about whether McCarver should be punished. He is being punished.

It's about whether McCarver's sentence should be commuted from death to life in prison.

It's also about conscience. To have the mind of a child is, in our view, the same as being a child under law.

This, not the satisfaction of revenge or fear of crime, goes to the heart of what the Supreme Court will be deciding.

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Comments to Committee Members
Re: House Bill 141 (No Death Penalty/Mentally Retarded)
Speaker: Birdie Frink, Shallotte, NC
Place: Legislative Auditorium, Raleigh, NC
Date: Wednesday, April 11, 2001

Representative Hackney and Committee Members, thank you for allowing me to address you today. My name is Birdie Frink and I live in Shallotte - Brunswick County.

I can remember a time when I didn't believe in the death penalty at all. Life was so different then. Not because irresponsibility, brutality, and heinous inhumanity didn't exist, but because I had not yet been introduced to them.

In 1995, I started working with victims of violent crime. Through the horror and shocking experience of these victims, I have obtained a good deal of knowledge of how these crimes are handled by law enforcement and throughout the legal system. My entire life is now dedicated to advocate for victims' rights, to provide support and information for crime victims, and to share my knowledge by increasing public awareness.

To those who have been fortunate enough not to experience such violence, first hand, such an ordeal provides a cruel and mind-altering education. The ever-shocking awareness is born, not only of the crime itself, but further, by the twists and bends, the nooks and crannies of the legal system itself. I have observed and studied in horror, as over time, we, as a nation, have allowed the way we handle our distaste for barbarism to actually fuel its perpetration; not slow it down, not stop it.

In our society and in our laws today, we have replaced the acceptance of responsibility with that of excuses. If an offender fails to create sufficient excuses for himself, we dig around and offer up boundless excuses for him or her. We give them labels to wear as banners of pardon. As our leniency for crime has grown, so has crime itself, and therefore the need for more prisons, and a long list of other requirements, which lead to further backlash against the victims of the crimes.

I believe in the death penalty, not as much for retribution as for prevention. I know of no credible evidence that the death penalty is administered unfairly in the State of North Carolina. I believe that there are more than adequate safeguards already in place in the criminal justice system and that there is no basis for a moratorium and that the establishment of a moratorium would only serve to undermine the public's confidence in our judicial system and would certainly be an injustice to those individuals who have had a loved one murdered.

The safeguards provided for the accused in the North Carolina Criminal Justice System include the right of an automatic appeal to the North Carolina Supreme Court and access to the Federal Courts. These processes assure that the rights of all defendants convicted in every capital case will be fairly reviewed before the ultimate punishment is imposed.

I do not believe that a person who is mentally retarded to the degree that he or she cannot distinguish right from wrong, and who has no understanding of death or murder, should be given the death penalty. I do, however, believe that that person should be contained, throughout the remainder of his or her life, in an appropriate hospital or facility.

Thank you so very much for allowing me to address you today and I truly appreciate the many, many hours spent on this extremely important Bill that will affect not only crime victims, but all concerned citizens as well.

The Arc of North Carolina

Working with and for People with Mental Retardation and other Developmental Disabilities

Comments for Public Hearing on No Death Penalty for People with Mental Retardation

On behalf of The Arc of North Carolina, I am here to support proposed legislation to eliminate the death penalty for people with mental retardation in North Carolina. Our position is based on our belief that although a person with mental retardation may understand the nature of their crime and know it was wrong, they would certainly not fall in the category of most culpable.

The Arc in North Carolina is an organization of over 5,000 members, many of whom have family members with mental retardation. Our membership is diverse on how they feel about the death penalty, some for, some against, but we are unified in our belief that for people with mental retardation, this penalty is not appropriate.

Many questions have been raised about the definition and the test that helps determine the definition. The definition of mental retardation is one that has

State Headquarters
16 E. Rowan Street, Suite 204
Raleigh, NC 27609
919-782-4632 ~ 1-800-662-8706
Fax 919-782-4634

Formerly the Association for Retarded Citizens/North Carolina, Inc.

been established by the American Association on Mental Retardation, the oldest and one of the most respected of our professional associations. This definition is conservative, so that only those individuals who are clearly limited in their function by their intellectual capacity meet the definition. It is conservative by design to avoid unnecessarily stigmatizing people. Individuals who in the past may have been called "borderline mentally retarded", are no longer classified as such even though their intellectual capacity may cause long-term difficulties in a person's ability to achieve success. The I.Q. of 70 is not precise, an I.Q. of 71 is not substantially different than an I.Q. of 70, but in creating a definition, we must use a defined standard. Though testing is not perfect, this definition makes it difficult if not impossible to "cheat".

As you debate the merits of these bills, you will undoubtedly be faced with the question of whether it is possible that someone who is not mentally retarded may benefit from this bill. Certainly it is possible that a person may be on the "borderline" and barely meet the definition of mental retardation. If that does happen and the individual is convicted of the crime, they will still face life imprisonment without the benefit of parole. Still a serious penalty! On the other hand, without this bill, an individual with mental retardation will face the ultimate punishment. The question you must

answer is if it is worth the risk of someone who may be "borderline mentally retarded" avoiding the death penalty and still receiving life imprisonment, to achieve a public policy objective of not executing people with mental retardation.

We believe, this General Assembly, acting on behalf of the people of North Carolina, should say clearly that it is the compassionate policy of the Great State of North Carolina that we do not execute people with mental retardation. We respectfully ask that you make that statement during this legislative session.

The Arc®

The national organization of and for people with mental retardation and related disabilities and their families

JUSTICE AND FAIR TREATMENT UNDER THE CRIMINAL LAW

ISSUE

Individuals with mental retardation who become involved in the criminal justice system as victims, witnesses, or defendants are more likely to face injustice if the system does not consider their disabilities and capabilities.

Among current major problems:

- Fear, prejudice and lack of understanding of people with mental retardation exist and are magnified when they become involved in a crime.
- Most attorneys, judges, law enforcement personnel, and citizens serving on juries lack the knowledge and skills necessary to ensure that people with mental retardation obtain justice.
- Appropriate investigations and expert testimony to ensure adequate representation are costly. Since most people with mental retardation have limited resources, investigations and expert testimony may not be available.
- Incarcerated (in jail or prison) people with mental retardation are particularly vulnerable to abuse and exploitation.
- There are few organized and recognized resources for information, training, technical assistance and referral for people with mental retardation when they encounter the criminal justice system.
- People with mental retardation involved with the criminal justice system encounter problems that are caused by their disability, such as:
    - ◊ Failing to have their disability identified by authorities because the individual is attempting to hide mental retardation;
    - ◊ Giving incriminating, but inaccurate "confessions," because the individual wants to please or is confused or misled by inappropriately used investigative techniques;
    - ◊ Being found incompetent to stand trial because the individual cannot understand the criminal justice proceeding;
    - ◊ Being found incompetent and being inappropriately placed in an institution for a long period of time in order to "regain competency";
    - ◊ Being unable to assist their lawyer in their own defense;
    - ◊ Waiving rights unknowingly in the face of required warnings such as Miranda;
    - ◊ Being victimized by the criminal justice system because their testimony is not deemed credible whether as a witness, victim or defendant.
- Tests created to determine if people with mental illness know right from wrong cannot and should not be applied to people with mental retardation.
- Statistics and other information reflecting the involvement of individuals with mental retardation as victims or defendants in the criminal justice system are incomplete.

POSITION

The Arc strongly supports a criminal justice system that applies the following principles:

- All individuals with mental retardation, like all other residents of the United States, are protected under the Constitution and Bill of Rights and have the right to fair treatment in the criminal justice system. Fair treatment requires consideration of all dimensions of the individual and his or her circumstances, including the presence of mental retardation.
- Individuals with mental retardation must have access to education that, among other goals, enhances their ability to protect themselves from criminal victimization and avoid possible criminal activities.
- Education about mental retardation must be provided to defense lawyers, prosecutors, judges, court personnel, forensic evaluators, law enforcement personnel, victim assistance providers and criminal justice policymakers in order to improve the likelihood that individuals with mental retardation will be treated fairly.
- Individuals with mental retardation who are victims of crime must have their rights protected. They must get the assistance they need to have their cases effectively prosecuted. Judges should be educated to the fact that the presence of mental retardation does not affect the credibility of a witness, and appropriate jury charges should be developed for juries who are called upon to weigh the evidence and decide cases.
- As witnesses, individuals with mental retardation must have the necessary support[1] so that their testimony is considered credible.
- Prior to being questioned by law enforcement personnel, individuals with mental retardation must have the right to confer with an advocate who understands mental retardation and the criminal justice system.
- Individuals with mental retardation who are defendants in criminal prosecutions must be provided competent lawyers who understand their disability and who have access to a list of expert witnesses in mental retardation.
- If a defendant with mental retardation is found guilty, any sentencing, treatment, habilitation, or other services, such as community correction programs, must take the disability into account.
- Individuals with mental retardation who are defendants in criminal prosecutions, and where an alternative to incarceration is appropriate, shall be provided the necessary services and interventions to help them live in the community. No opportunity for treatment or services shall be denied to people with mental retardation solely on the basis of their criminal charge or background.
- When a person with mental retardation is incarcerated, education, rehabilitation and reasonable accommodations must be provided.
- The correctional system must ensure the individual's safety and welfare including protection from other prisoners, when incarcerated.
- Existing case-by-case determinations of competence to stand trial, criminal responsibility and mitigating factors at sentencing have proved insufficient to protect the rights of individuals with mental retardation. The presence of mental retardation by definition raises so many possibilities of miscommunication, misinformation, and an inadequate defense that the imposition of the death penalty is unacceptable. People with mental retardation shall be exempt from the death penalty, but not from other appropriate punishment, on a case-by-case basis.

[1] An example of support includes the use of an individual trained to assist witnesses with mental retardation in understanding courtroom proceedings.

Adopted by Delegate Body, Oct. 1998. Replaces position adopted in 1992. One of a series of position statements reflecting The Arc's vision on issues affecting people with mental retardation and related developmental disabilities and their families. The Arc of the United States, 1010 Wayne Avenue, Suite 650, Silver Spring, Maryland 20910; (301) 565-3842.

ATTACHMENT XIV

9 April, 2001

Senator Marc Basnight
Senator Pro-tempore
General Assembly
State of North Carolina

The crime of murder, whether of one or of thousands, is not acceptable in a civilized society. The General Assembly is being asked to suspend or change laws long in place to protect and safeguard citizens of the State of North Carolina.

Whether to suspend, change, or redefine the death penalty under North Carolina law are not the questions that need to be addressed. What is needed is constant review and attention to the administration of justice. Judges, prosecution, trial lawyers, and most importantly jurors, involved in a first degree or capital murder case, must continue to take personal responsibility for sentencing within the law. Parameters of competence and zeal must be understood and adhered to by those under oath in any trial.

A sentence of death in a first degree or capital murder trial is not preordained. Nor is murder reversible or acceptable. The options available in a case that allows for the death penalty are clearly explained and can be questioned for further understanding by jurors. Life without parole is a choice as well. Before 1998, this specific sentence could not be explained in detail prior to deliberations. Jurors had to consider a sentence without fully understanding its meaning. Unfair and in need of clarification, this restriction was removed by the General Assembly. From that time, the presiding judge must tell jurors that such a sentence means the convicted person will serve 25 years in prison before consideration for parole. Death as a penalty should still be available to defend against unjust aggression.

The laws that exist are the allowable consensus of the citizens of the community in our democratic society. Individual choices dictate how we choose to live within society. A person who makes a choice to murder, an act punishable by death, must face a jury of individuals. Each juror must make a choice based on fact and the law on how best to protect the community. A criminal act punishable by death is the choice of one person. In like manner, the act of one juror can exclude but not remove the death penalty as punishment.

Do not change law that contains all the latitude necessary to arrive at proper punishment. Do insure that personal responsibility by the judge, prosecution, trial lawyer and jurors continues to keep forever connected both ethics and truth in the administration of justice.

Respectfully,

Richard A. Hale
Wake Forest, NC

House Judiciary I Committee

April 12, 2001

Minutes

The House Judiciary I Committee met on Thursday, April 12, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Gray, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that the Senate version of House Bill 141, NO DEATH PENALTY/MENTALLY RETARDED was being heard during this same hour, and that it ha been agreed to remove the House version from the agenda.

Representative Sutton was recognized to explain House Bill 140, AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment III). The bill prohibits the imposition of the death penalty where the death sentence is sought based on race. Representative Sutton said that if the defendant can show that race was a significant factor in the decision to seek the death penalty in a pre-trial hearing, there would be no death penalty sought in that case. The defendant would still be subject to life without parole if found guilty of a capital crime, or a crime deserving of a capital sentence. He said that the bill also has a provision that would allow the matter to be heard in a post-trial.

A bill analysis, prepared by Ms. Susan Sitze, Committee Counsel, was distributed, (Attachment IV).

There was considerable discussion regarding the retroactive aspect of the bill, statistical data, and the racial make-up of inmates currently on death row in North Carolina.

Representative Redwine questioned the cost to the state if the bill becomes law.

Chairman Hackney suggested that the committee hear from Judge Hobgood, Director, Administrative Office of the Courts, to comment on the number of inmates on death row that could be impacted by the bill.

The meeting was adjourned without any action being taken on the bill.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 12, 2001

AGENDA

HOUSE BILL 141 – NO DEATH PENALTY
REPRESENTATIVE RON SUTTON

HOUSE BILL 140 – RACIAL JUSTICE ACT
REPRESENTATIVE RON SUTTON

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 12, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Otis Cartas	Cartas & Associates
Matt Osborne	AOC
Tiffany Bonga	Intern
Scott Mountain	AP
Lisa Robertson	Fiscal Research
Melissa Lovell	DOJ
Ray Jones	NC Conference of District Attorneys
Ken Ingram	Gov's office
Susan Valaum	Nationwide
Deb Rapp	ACLU
Paul Pulley	attn
Pat A. Young	ACLU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 140*

Short Title:	Racial Justice Act.	(Public)
Sponsors:	Representatives Sutton, Fitch, Luebke; Alexander, Boyd-McIntyre, Goodwin, Hackney, Hall, Insko, Lucas, McAllister, Wainwright, Weiss, and Womble.	
Referred to:	Judiciary I.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death that was sought or obtained on the basis of race.

"**§ 15A-2011. Pretrial procedures.**

(a) A finding that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought.

(b) Evidence relevant to establish a finding that race was the basis of the decision to seek a death sentence may include statistical evidence or other evidence, or both, that irrespective of statutory factors death sentences were sought significantly more frequently:

(1) Upon persons of one race than upon persons of another race; or

(2) As punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(c) The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death

sentence in his or her case. The claim shall be raised by the defendant at the pretrial conference. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis of the decision to seek the death sentence, the court shall order that a death sentence shall not be sought.

(d) The defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek the death penalty. The State may offer evidence in rebuttal of the claims or evidence of the defendant.

"**§ 15A-2012. Posttrial procedure.**

(a) A finding that race was an improper basis upon which a death sentence was obtained may be established if the court finds that race was a significant factor in decisions to exercise peremptory challenges during jury selection.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to exercise peremptory challenges during jury selection may include statistical evidence, or other evidence, or both. Evidence may include sworn testimony of attorneys, prosecutors, and/or law enforcement officers or other members of the criminal justice system."

SECTION 2. This act is effective when it becomes law and applies retroactively.

HOUSE BILL 140:
Racial Justice Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Sutton, Fitch, Luebke
Date:	April 12, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 140 prohibits the imposition of the death penalty where the death sentence is sought based on race.***

BILL ANALYSIS: House Bill 140 creates a new Article 101 in Chapter 15A, entitled "North Carolina Racial Justice Act". The Article allows a pretrial finding that race was the basis of the decision to seek a death sentence. The burden is on the defendant to prove by clear and convincing evidence that irrespective of statutory factors, in the county, prosecutorial district, or the State at large, death sentences were sought significantly more frequently for defendants of one race than of another race, or for crimes where the victim was one race rather than another race.

The bill also provides for a posttrial finding that race was the basis for seeking the death penalty based on the use of race as a significant factor in decisions to exercise peremptory challenges during jury selection.

This act is effective when it becomes law and applies retroactively.

House Judiciary I Committee

April 17, 2001
AM Meeting

Minutes

The House Judiciary I Committee met on Tuesday, April 17, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blue, Blust, Clary, Gray, Insko, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that an informal subcommittee was appointed to study the bills that are on the agenda for discussion. Serving on the subcommittee were: Representatives Hackney, Arnold, Blue, Blust and Nesbitt.

Representative Blue presided during the discussion of House Bill 1084, AN ACT TO CLARIFY THAT AN ACTION FOR EQUITABLE DISTRIBUTION DOES NOT ABATE UPON THE DEATH OF A PARTY, (Attachment III). Representative Hackney stated that the bill would allow for an action of equitable distribution to go forward in the event of the death of one of the parties during the pendency of that action.

A bill analysis prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV). A copy of the statutes regarding distribution by court of marital and divisible property upon divorce was also distributed and is attached, (Attachment V).

Representative Sutton moved a favorable report for the bill. The motion carried, (Attachment VI).

Representative Blue was recognized to explain House Bill 898, AN ACT TO ENACT THE STATE EMPLOYEE FEDERAL REMEDY RESTORATION ACT, (Attachment VII). He said the bill would make the state liable to be sued if the state should violate certain federal laws under the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, or any other federal statute granting rights, protections, or remedies to employees.

Ms. Sitze was recognized for further explanation. She said that the bill puts state employees on approximately the same level as private employees. She said that there have been a couple of Supreme Court cases and that there is much confusion as to what does and does not apply to state employees. She said that the 11th amendment to the constitution prohibits the federal government from interfering with states' sovereign immunity, so there is essentially constitutional prohibition against the federal government saying the state can be sued. In order for the federal acts to truly apply to state employees, the state must waive that sovereign immunity so that state employees can have the same benefits as private employees. She said that the bill waives that sovereign immunity for the limited purposes of

allowing state employees to sue based on violations of the acts mentioned above. The bill analysis prepared by Ms. Sitze is attached, (Attachment VIII).

Ms. Artis Watkins, State Employees Association of North Carolina, commented briefly in support of the bill.

Chairman Hackney asked if a fiscal note had been prepared. Ms. Watkins replied that passage of the bill would not likely incur any additional cost.

Representative Redwine asked if there was a cap on awards. Representative Blue replied that there are predetermined statutory amounts of recovery.

Discussion followed and Mr. Bill Rowe, North Carolina Justice Center responded to a few questions.

Representative Gray asked if this could lead to a group of employees entering into a class action lawsuit against the state resulting in a major award being granted? Representative Blue replied that it was possible, but unlikely in that there must be a specific remedy on a specific violation.

Representative Blue offered an amendment to include the Americans with Disabilities Act, (Attachment IX). Upon vote of the committee, the amendment was adopted.

Representative Sutton moved to roll the amendment into a committee substitute, and that the committee substitute be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment X).

Representative Redwine requested a fiscal note prior to the floor debate of the bill.

Representative Blue was again recognized for an explanation of House Bill 1094, AN ACT TO CORRECT AN ERROR MADE IN 1999 IN THE TERM OF OFFICE OF A NEW SUPERIOR COURT JUDGESHIP IN SUPERIOR COURT DISTRICT 22, (Attachment XI). Representative Blue said that the bill is designed to correct an unfair result of an action of the last session. He said that a new superior court judgeship was created in 1999 in Superior Court District 22. When the judgeship was created, it was provided that the first election for the judgeship would be in the year 2000, but would also stand for election in the year 2002 for a full 8-year term. The bill would amend the statute to make the term expire December 31, 2008.

A bill analysis prepared by Ms. Sitze is attached, (Attachment XII).

Representatives Thompson and Sutton expressed concern regarding changing the length of term after voters thought they were voting for the judge to serve for two years.

Mr. Michael Crowell, a local attorney, spoke in support of the bill.

Representative Blue moved a favorable report for House Bill 1094.

Representative Thompson opposed the motion for a favorable report.

Representative Walker spoke in opposition to the bill.

Upon voice vote, the Chair ruled that the bill had been given a favorable report.

Division was called. Upon a show of hands, the bill passed by a vote of 6 to 5, (Attachment XIII).

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 17, 2001
10:00 A.M.

AGENDA

HOUSE BILL 898 – STATE EMPLOYEE FEDERAL REMEDY RESTORATION
REPRESENTATIVE DAN BLUE

HOUSE BILL 1083 – SECURE CUSTODY OF JUVENILES USING WEAPONS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1084 – EQUITABLE DISTRIBUTION CLARIFICATION
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1085 – PROBATION REVOCATION TO COURT OF APPEALS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1094 – CORRECT TERM OF JUDGESHIP
REPRESENTATIVE DAN BLUE

HOUSE BILL 1139 – APPEALS FROM CONTEMPT
REPRESENTATIVE JOE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 17, 2001 10:00 am meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Osborne	AOC
ANNE MARKOWITCH	League of Women Voters
Ann Seng	Wake League of Women Voters
Marian Phillips	PFAD
MICHAEL CROWELL	LAWYER RALEIGH
Bill Rowe	NC Justice Center
Mike Okun	NC State AFL-CIO
Kelly DIX	DJJDP
Nelli Polley	OSP
Sherry Melton	SEANC
Cindi Watkins	SEANC
Linda L. George	Davidson County Community College
Anne Freeman	DCCC
Jason A. Carson	DCCC, P.O. Box 1287, Lexington NC 27293
Sharon Kpontz	DCCC, P.O. Box 1287, Lexington, NC 27293-1287
Michesha Wagner	DCCC. P.O. BOX 1287, Lexington NC 27293.
Casey Berkshire	DCCC
Kellen Dodd	DCCC " "
Jennifer Saunders	DCCC " "
Dan Kelly	DCCC
Dario Furovich	DCCC
Adam Searing	NCHAC
Paula A. Wolf	Covenant w/ NC's Children
Lynn C. Fulton	NCCU
Henry Horn	NCPMA.
Jamie Perry	NCCU Student

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GLADYS HARRIS	North Carolina Central University Durham NC
Shauna L. Dozier	North Carolina Central University Durham, NC
GARY GOVERT	N.C. PRESS ASSOCIATION
Pat Sowers	NC Conference of DAs

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1084

Short Title:	Equitable Distribution Clarification.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ACTION FOR EQUITABLE DISTRIBUTION DOES NOT ABATE UPON THE DEATH OF A PARTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-21(a) reads as rewritten:

"(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be ~~filed~~,filed and adjudicated, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include

in its order appropriate provisions to ensure compliance with the order of equitable distribution."

SECTION 2. G.S. 50-20 is amended by adding a new subsection to read:

"(l) An action for equitable distribution shall not abate upon the death of a party."

SECTION 3. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

HOUSE BILL 1084:
Equitable Distribution Clarification

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1084 clarifies that an action for equitable distribution does not abate upon the death of a party.***

BILL ANALYSIS: House Bill 1084 amends G.S. 50-21 and G.S. 50-20, to clarify that if one of the parties to an equitable distribution action dies, the action shall not abate and the court shall still adjudicate the equitable distribution.

This act is effective when it becomes law and applies to actions pending or filed on or after that date.

§ 50-20. Distribution by court of marital and divisible property upon divorce.

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property.

(3) "Distributive award" means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

(4) "Divisible property" means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

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c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of pension, retirement, or other deferred compensation rights that are not marital property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;

(9) The liquid or nonliquid character of all marital property and divisible property;

(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

(11) The tax consequences to each party;

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of distribution; and

(12) Any other factor which the court finds to be just and proper.

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(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property and divisible property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property and divisible property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property or divisible property, or both, in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind. In any action in which the presumption is rebutted, the court in lieu of in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property or divisible property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property, divisible property, or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse

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in the property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) Unless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property and divisible property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property and divisible property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation.

(1981, c. 815, s. 1; 1983, c. 309; c. 640, ss. 1, 2; c. 758, ss. 1-4; 1985, c. 31, ss. 1-3; c. 143; c. 660, ss. 1-3; 1987, c. 663; c. 844, s. 2; 1991, c. 635, ss. 1, 1.1; 1991 (Reg. Sess., 1992), c. 960, s. 1; 1995, c. 240, s. 1; c. 245, s. 2; 1997-212, ss. 2-5; 1997-302, s. 1; 1998-217, s. 7(c).)

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§ 50-21. Procedures in actions for equitable distribution of property; sanctions for purposeful and prejudicial delay.

(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution.

(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution.

(c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to trial by jury as provided by the Constitution of North Carolina.

(d) Within 120 days after the filing of the initial pleading or motion in the cause for equitable distribution, the party first serving the pleading or application shall apply to the court to conduct a scheduling and discovery conference. If that party fails to make application, then the other party may do so. At the conference the court shall determine a schedule of discovery as well as consider and rule upon any motions for appointment of expert witnesses, or other applications, including applications to determine the date of separation, and shall set a date for the disclosure of expert witnesses and a date on or before which an initial pretrial conference shall be held.

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At the initial pretrial conference the court shall make inquiry as to the status of the case and shall enter a date for the completion of discovery, the completion of a mediated settlement conference, if applicable, and the filing and service of motions, and shall determine a date on or after which a final pretrial conference shall be held and a date on or after which the case shall proceed to trial.

The final pretrial conference shall be conducted pursuant to the Rules of Civil Procedure and the General Rules of Practice in the applicable district or superior court, adopted pursuant to G.S. 7A-34. The court shall rule upon any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice.

(e) Upon motion of either party or upon the court's own initiative, the court shall impose an appropriate sanction on a party when the court finds that:

(1) The party has willfully obstructed or unreasonably delayed, or has attempted to obstruct or unreasonably delay, discovery proceedings, including failure to make discovery pursuant to G.S. 1A-1, Rule 37, or has willfully obstructed or unreasonably delayed or attempted to obstruct or unreasonably delay any pending equitable distribution proceeding, and

(2) The willful obstruction or unreasonable delay of the proceedings is or would be prejudicial to the interests of the opposing party.

Delay consented to by the parties is not grounds for sanctions. The sanction may include an order to pay the other party the amount of the reasonable expenses and damages incurred because of the willful obstruction or unreasonable delay, including a reasonable attorneys' fee, and including appointment by the court, at the offending party's expense, of an accountant, appraiser, or other expert whose services the court finds are necessary to secure in order for the discovery or other equitable distribution proceeding to be timely conducted.

(1981, c. 815, s. 6; 1983, c. 671, s. 1; 1985, c. 689, s. 21; 1987, c. 844, s. 1; 1991, c. 610, s. 2; 1991 (Reg. Sess., 1992), c. 910, s. 1; 1993, c. 209, s. 1; 1995, c. 244, s. 1; c. 245, s. 1; 1997-302, s. 2.)

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1084 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT AN ACTION FOR EQUITABLE DISTRIBUTION DOES NOT ABATE UPON THE DEATH OF A PARTY.

☒ 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 898

Short Title:	State Emp. Federal Remedy Restoration Act.	(Public)
Sponsors:	Representatives Hensley and Blue (Primary Sponsors).	
Referred to:	Judiciary I.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ENACT THE STATE EMPLOYEE FEDERAL REMEDY RESTORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 31D.

"State Employee Federal Remedy Restoration Act.

"**§ 143-300.35. State Employee Federal Remedy Restoration Act.**

The sovereign immunity of the State is waived for the limited purpose of allowing State employees to maintain lawsuits and obtain and satisfy judgments against the State or any of its departments, institutions, or agencies under:

(1) The Fair Labor Standards Act, 29 U.S.C. 201 et seq.

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621 et seq.

(3) The Family and Medical Leave Act, 29 U.S.C. 2601 et seq.

(4) Any other federal statute granting rights, protections, or remedies to employees."

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

HOUSE BILL 898:
State Emp. Federal Remedy Restoration Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hensley & Rep. Blue
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 898 enacts the State Employee Federal Remedy Restoration Act.

BILL ANALYSIS: House Bill 898 adds a new Article 31D to Chapter 143, entitled "State Employee Federal Restoration Act". The new G.S. 143-300.35 waives the sovereign immunity of the State for the limited purpose of allowing State employees to maintain lawsuits and obtain and satisfy judgments against the State or any of its departments, institutions, or agencies under the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, or any other federal statue granting rights, protections, or remedies to employees.

This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT IX**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 898 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 15-16

( ) WHICH CHANGES THE TITLE

by inserting between the lines:

"(4) The Americans with Disabilities Act, 42 USC 12101 et seq."

and on page 1, line 16

by deleting "(4)" and inserting "(5)"

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 898 A BILL TO BE ENTITLED TO ENACT THE STATE EMPLOYEE FEDERAL REMEDY RESTORATION 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 (#), ☐ 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 1094

Short Title:	Correct Term of Judgeship.	(Public)
Sponsors:	Representative Blue.	
Referred to:	Judiciary I.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO CORRECT AN ERROR MADE IN 1999 IN THE TERM OF OFFICE OF A NEW SUPERIOR COURT JUDGESHIP IN SUPERIOR COURT DISTRICT 22.

The General Assembly of North Carolina enacts:

SECTION 1. Subsection 17.12(c) of S.L. 1999-237 reads as rewritten:

"Section 17.12(c). The Governor shall appoint a superior court judge for the additional judgeship in Superior Court District 22 as authorized by subsection (b) of this section. The successor to that judge shall be elected in the 2000 general election to serve ~~the remainder of the unexpired~~ a term expiring December 31, ~~2002, in order to provide for unstaggered terms for multiple judgeships in the same district.~~ 2008."

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

HOUSE BILL 1094:
Correct Term of Judgeship

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Blue
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1094 corrects an error made in 1999 in the term of office of a new superior court judgeship in Superior Court District 22.

BILL ANALYSIS: House Bill 1094 amends subsection 17.12(c) of S.L. 1999-237 to change the term of office for a new superior court judgeship that was created in Superior Court District 22. The original term is set to expire December 31, 2002. The bill amends that subsection to make the term expire December 31, 2008.

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY**.

☐ Committee Substitute for
H.B. 1094 A BILL TO BE ENTITLED AN ACT TO CORRECT AN ERROR MADE IN 1999 IN THE TERM OF OFFICE OF A NEW SUPERIOR COURT JUDGESHIP IN SUPERIOR COURT DISTRICT 22.

☒ 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 Judiciary I Committee

April 17, 2001
PM Meeting

Minutes

The House Judiciary I Committee met on Tuesday, April 17, 2001 at 3:00 p.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blue, Blust, Gray, Insko, Nesbitt, Redwine, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that the committee would continue with the agenda from the morning meeting of the committee. He asked Vice-Chairman Blue to preside during the discussion of the bills to be considered.

Representative Hackney was recognized to explain House Bill 1085, AN ACT TO ELIMINATE DENOVO APPEALS TO THE SUPERIOR COURT FROM A DISTRICT COURT JUDGE'S REVOCATION OF PROBATION OR IMPOSITION OF SPECIAL PROBATION, (Attachment III). He said that district court judges had requested the legislation and briefly discussed the current law. He said that when a district court judge activates a sentence or imposes special probation, as a result of finding a violation of probation, the defendant may appeal to the superior court for a de novo revocation hearing. He told the committee that a de novo hearing means that the superior court will hear all of the evidence again as if the hearing in district court never took place. Representative Hackney said that the bill would remove the appeal de novo to the superior court from a district court judge's revocation of probation and would provide that the appeal be made directly to the Court of Appeals.

Ms. Susan Sitze, Committee Counsel, was recognized for additional comment. Her bill analysis is attached, (Attachment IV).

Mr. Matt Osborne, Administrative Office of the Courts, spoke in support of the bill.

Representative Alexander moved a favorable report for the bill. The motion carried, (Attachment V).

Representative Hackney was recognized for an explanation of House Bill 1139, AN ACT TO AMEND THE APPELLATE PROCEDURE FOR CRIMINAL CONTEMPT, (Attachment VI). He said under current law, an appeal from a finding of criminal contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge. The bill, introduced at the request of district court judges, would provide that the appeal from a finding of criminal contempt by a district court judge or a superior court judge is to the Court of Appeals. The appeal from a finding by a magistrate or a clerk of superior court is by hearing de novo before a superior court judge. He further noted that an appeal from a finding of criminal contempt in a workers' compensation action is to the Court of Appeals.

A bill analysis, prepared by Ms. Sitze, is attached, (Attachment VII).

Mr. Osborne spoke in support of the bill.

Representative Alexander moved for a favorable report. The motion carried, (Attachment VIII).

Representative Hackney was recognized to explain House Bill 1083, AN ACT TO ALLOW THE COURT TO ORDER SECURE CUSTODY OF A JUVENILE PENDING AN ADJUDICATORY PROCEEDING IF THE JUVENILE ALLEGEDLY COMMITTED A MISDEMEANOR OFFENSE INVOLVING A WEAPON, (Attachment IX). He said that the bill expands the circumstances where a juvenile may be locked up, but does not compel it. The bill would allow a juvenile court judge to order secure custody for a juvenile pending an adjudicatory hearing, who is alleged to be delinquent, if the juvenile has demonstrated that he or she is a danger to persons. This applies if a juvenile is charged with a misdemeanor in which the juvenile used a weapon, or had a weapon in his or her immediate possession.

A bill analysis is attached, (Attachment X).

Representative Hackney offered an amendment, (Attachment XI), and moved its adoption. The amendment would rewrite lines 19-20 on page 1 to read: "which the juvenile used or displayed, or threatened to use or display, a weapon," and noted that the amendment would narrow the bill.

Upon vote of the committee, the amendment was adopted.

Following committee discussion, Representative Hackney offered a second amendment to replace the word "weapon" in the first amendment with the words, "firearm or other deadly weapon," (Attachment XII).

The amendment was adopted.

The bill, as amended, was before the committee.

Representative Gray moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment XIII). A copy of the committee substitute is attached, (Attachment XIV).

The meeting was adjourned at 4:00 p.m.

Representative Dan Blue
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 17, 2001

10:00 A.M.

AGENDA

HOUSE BILL 898 – STATE EMPLOYEE FEDERAL REMEDY RESTORATION
REPRESENTATIVE DAN BLUE

HOUSE BILL 1083 – SECURE CUSTODY OF JUVENILES USING WEAPONS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1084 – EQUITABLE DISTRIBUTION CLARIFICATION
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1085 – PROBATION REVOCATION TO COURT OF APPEALS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1094 – CORRECT TERM OF JUDGESHIP
REPRESENTATIVE DAN BLUE

HOUSE BILL 1139 – APPEALS FROM CONTEMPT
REPRESENTATIVE JOE HACKNEY

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 17, 2001 1:00 pm meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Williams	NCMBA
Matt Osborne	AOC
Deb Rose	
Rob Schaffer	NCJCDC
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
Brian Francis	Mack Cody

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1085

Short Title:	Probation Revocation to Ct. of Appeals.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE DE NOVO APPEALS TO THE SUPERIOR COURT FROM A DISTRICT COURT JUDGE'S REVOCATION OF PROBATION OR IMPOSITION OF SPECIAL PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1347 reads as rewritten:

"**§ 15A-1347. Appeal from revocation of probation or imposition of special probation upon violation.**

When a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal ~~to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. When the defendant appeals to the superior court because a district court has found he violated probation and has activated his sentence or imposed special probation, and the superior court, after a de novo revocation hearing, orders that the defendant continue on probation under the same or modified conditions, the superior court is considered the court that originally imposed probation with regard to future revocation proceedings and other purposes of this Article. When a superior court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, either in the first instance or upon a de novo hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.~~directly to the Court of Appeals pursuant to G.S. 7A-27."

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

HOUSE BILL 1085:
Probation Revocation to Ct. of Appeals

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1085 eliminates de novo appeals to the superior court from a district court judge's revocation of probation or imposition of special probation.

CURRENT LAW: Currently, when a district court judge activates a sentence or imposes special probation, as a result of finding a violation of probation, the defendant may appeal to the superior court for a de novo revocation hearing. A de novo hearing means that the superior court will hear all of the evidence again as if the hearing in district court never occurred.

BILL ANALYSIS: House Bill 1085 removes the appeal de novo to the superior court from a district court judge's revocation of probation or imposition of special probation, and provides that the appeal be directly to the Court of Appeals.

This act is 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1085 A BILL TO BE ENTITLED AN ACT TO ELIMINATE DE NOVO APPEALS TO THE SUPERIOR COURT FROM A DISTRICT COURT JUDGE'S REVOCATION OF PROBATION OR IMPOSITION OF SPECIAL PROBATION.

☒ 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 1139

Short Title:	Appeals From Contempt.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE APPELLATE PROCEDURE FOR CRIMINAL CONTEMPT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 5A-17 reads as rewritten:

"**§ 5A-17. Appeals.**

A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a ~~finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.~~ district court judge or a superior court judge is to the Court of Appeals, and appeal from a magistrate or a clerk of superior court is by hearing de novo before a superior court judge."

SECTION 2. G.S. 97-80(h) reads as rewritten:

"(h) The Commission or any member or deputy thereof shall also have the same power as a judicial officer pursuant to Chapter 5A of the General Statutes to punish for criminal contempt, subject to the limitations thereunder, (i) for wilful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (ii) for wilful disobedience of a lawful order of the Commission or a member or deputy thereof; or (iii) for wilful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, wilful refusal to answer any legal and proper question when refusal is not legally justified. The Commission or any member or deputy thereof may issue an order of arrest as provided by G.S. 15A-305 when authorized by G.S. 5A-16 in connection with contempt proceedings. When the commissioner or deputy commissioner chooses not to proceed summarily pursuant to G.S. 5A-14, the proceedings shall be before a district court judge, and venue lies throughout the district where the order was issued directing the person charged to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the ~~superior court of the district in which the order of~~

~~contempt was issued, and the appeal is by hearing de novo before a superior court judge.~~ Court of Appeals."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

HOUSE BILL 1139:
Appeals from Contempt

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1139 amends the appellate procedure for criminal contempt.***

CURRENT LAW: Current law provides that the appeal from a finding of criminal contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.

BILL ANALYSIS: **Section 1** of House Bill 1139 amends G.S. 5A-17 to provide that the appeal from a finding of criminal contempt by a district court judge or a superior court judge is to the Court of Appeals, and appeal from a finding by a magistrate or a clerk of superior court is by hearing de novo before a superior court judge.

Section 2 amends G.S. 97-80(h) to provide that appeal from a finding of criminal contempt in a workers' compensation action is to the Court of Appeals.

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1139 A BILL TO BE ENTITLED AN ACT TO AMEND THE APPELLATE PROCEDURE FOR CRIMINAL CONTEMPT.

☒ 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 1083

Short Title:	Secure Custody of Juveniles Using Weapons.	(Public)
Sponsors:	Representatives Hackney; and Barefoot.	
Referred to:	Judiciary I.	

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO ORDER SECURE CUSTODY OF A JUVENILE PENDING AN ADJUDICATORY PROCEEDING IF THE JUVENILE ALLEGEDLY COMMITTED A MISDEMEANOR OFFENSE INVOLVING A WEAPON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1903(b) reads as rewritten:

"(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

(1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.

(2) ~~The juvenile is charged with a misdemeanor at least one element of which is assault on a person and has demonstrated that the juvenile is a danger to persons.~~ The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used a weapon or had a weapon in the juvenile's immediate possession.

(3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from (i) any residential facility operated by the Department or any detention facility in this State or (ii) any comparable facility in another state.

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

(7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, or where circumstances require, for a period not to exceed 72 hours to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays or where circumstances require for a period not to exceed 72 hours."

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

HOUSE BILL 1083:
Secure Custody of Juveniles Using Weapons

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1083 allows the juvenile court to order secure custody of a juvenile pending an adjudicatory proceeding if the juvenile allegedly committed a misdemeanor offense involving a weapon.***

BILL ANALYSIS: House Bill 1083 amends G.S. 7B-1903(b)(2) to allow a juvenile court judge to order secure custody for a juvenile who is alleged to be delinquent, pending an adjudicatory hearing, if the juvenile has demonstrated that the juvenile is a danger to persons and the juvenile is charged with a misdemeanor in which the juvenile used a weapon or had a weapon in the juvenile's immediate possession.

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

ATTACHMENT XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1083

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

H1083-ASA-9 [v.1]

Date _____,2001

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

Representative

- - - - - - - - - - - - - - - - - - -

1 moves to amend the bill on page 1, lines 19-20
2 by rewriting the lines to read:
3 "which the juvenile used or displayed, or threatened to use or display, a weapon."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1083 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Hackney
Sen.)

moves to amend the bill on page 1, lines 19-20

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"which juvenile used or displayed, or threatened to use or display, a firearm or other deadly weapon."

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1083 A BILL TO BE ENTITLED AN ACT TO ALLOW THE COURT TO ORDER SECURE CUSTODY OF A JUVENILE PENDING AN ADJUDICATORY PROCEEDING IF THE JUVENILE ALLEGEDLY COMMITTED A MISDEMEANOR OFFENSE INVOLVING A 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1083
PROPOSED COMMITTEE SUBSTITUTE H1083-PCS1177-SA-8

Short Title: Secure Custody of Juveniles Using Weapons. (Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO ORDER SECURE CUSTODY OF A JUVENILE PENDING AN ADJUDICATORY PROCEEDING IF THE JUVENILE ALLEGEDLY COMMITTED A MISDEMEANOR OFFENSE INVOLVING A WEAPON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1903(b) reads as rewritten:

"(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

(1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.

(2) ~~The juvenile is charged with a misdemeanor at least one element of which is assault on a person and has demonstrated that the juvenile is a danger to persons.~~ The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used or displayed, or threatened to use or display, a firearm or other deadly weapon.

(3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from (i) any residential facility operated by the Department or any detention facility in this State or (ii) any comparable facility in another state.

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

(7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, or where circumstances require, for a period not to exceed 72 hours to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays or where circumstances require for a period not to exceed 72 hours."

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

House Judiciary I Committee

April 18, 2001
AM Meeting

Minutes

The House Judiciary I Committee met on Wednesday, April 18, 2001 at 10:00 a.m. in Room 1425 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Arnold, Blue, Blust, Boyd-McIntyre, Gray, Insko, Nesbitt, Redwine, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Vice-Chairman Blue was asked to chair the meeting during the discussion of House Bill 643, AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS. The bill was first explained during the March 27, 2001 meeting of the committee. The bill was discussed for a second time during the April 10, 2001 meeting of the committee at which time a proposed committee substitute was presented and an amendment was adopted.

Representative Hackney offered a new proposed committee substitute, (Attachment III), and moved its adoption for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain changes made by the committee substitute. She said that the new committee substitute was largely the same as the one adopted for discussion during the April 10 meeting. She said that the privilege is still being modeled after other privileges in the statutes. She said that the term "agent' has been defined as a person who works at a rape crisis center or in a domestic violence program who has met requirements for training. She said that privilege communication provides that no agent of a center shall be required to disclose any information that the agent acquired during provision of services to a victim, and which information was necessary to enable an agent to render the services set forth in subsections (a)(3) and (a)(7). This language was in the committee substitute discussed on April 10. She said that new language, "provided, however, that this subsection shall not apply where the victim in open court waives the privilege conferred," was added to clarify that this is the victim's privilege even thought it is the agent who is the one who will be placed on the stand or be subpoenaed for the record. She said that it is the victim who owns the privilege and is the one who can waive the privilege. Ms. Sitze also pointed out that the language ..." The privilege afforded under this subsection terminates upon the death of the victim"....was a dded to line 3 of page 3 of the bill to clarify that this is the victim's privilege and if the victim is deceased, the privilege could no longer be asserted. Ms. Sitze also pointed out language on page 2, beginning on line 28 that was partially new. She said that a sentence regarding general discovery was deleted from the previous draft. A bill analysis prepared by Ms. Sitze is attached, (Attachment IV).

Representative Sutton expressed concern for situations where a victim, for health reasons, might not be able to appear in open court to waive the privilege.

Representative Hackney stated that he did not oppose the removal of the words "in open court" from the bill. He offered an amendment, (Attachment V), to delete the phrase "in open court" and moved its adoption. The amendment was adopted.

Representative Sutton moved that the amendment be incorporated into the new committee substitute, that it be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment VI).

Representative Blue was recognized to explain House Bill 884, AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION, (Attachment VII). A proposed committee substitute (Attachment VIII) was distributed and Representative Blue moved that it be adopted for the purpose of discussion. The motion carried. Representative Blue said that the bill sets up rules for DNA testing of crime scene evidence both before trial and post-conviction. The bill sets up the rules for testing DNA evidence from the crime scene in cases where testing was not previously available, or newer or more reliable testing is now available. The bill requires that DNA evidence from crime scenes be retained for future testing and creates a process for expunging a person's DNA records if that person is ound innocent. The bill provides compensation for people who are wrongfully convicted and sets up a system for collecting statistics about death penalty cases, and making an annual report to the General Assembly regarding those statistics. He said that the bill is based on provisions of several other bills including the Innocence Protection Act introduced in the United States Congress and a compilation of provisions from laws of other states. Representative Blue referred to the bill analysis prepared by Ms. Sitze, (Attachment IX) and made brief comments on Sections 1 and 2 of the bill. The bill analysis for the original version of the bill is also attached, (Attachment X).

Ms. Sitze was recognized and commented briefly on background information regarding DNA Database. She said that currently, if a person is convicted of a certain list of offenses, most of which are felonies, one is required upon conviction (since 1994) to give a DNA sample. If one was incarcerated prior to 1994, he is required to give a DNA sample before being released if convicted of one of the offenses on the list. The sample goes into a statewide database and also into a federal database that is used by law enforcement to compare with tissue samples from crime scenes, etc. She also discussed DNA testing in the appellant process. A copy of the statutes addressing DNA Database was distributed to the members of the committee (Attachment XI).

Representative Nesbitt called attention to the language in 15A-268 regarding "any biological material" and suggested that the language may need to be restricted in some way.

Professor Richard Rosen, UNC School of Law, was recognized to comment on the bill. Professor Rosen spoke briefly of his experience in defending Mr. Ronald Cotton who was sentenced to life plus one hundred and eighty years for a 1984 rape. The conviction was based on very strong eyewitness testimony and other circumstantial evidence. Those on the police force, and the prosecutors were

convinced of his guilt although Mr. Cotton always claimed innocence. Professor Rosen said that blood testing was done with the technology available in 1984 and was inconclusive. In 1995, the defense filed a motion in Alamance County for DNA testing based upon testing that had come into being within the past year. Biological samples were obtained from the rape kit, blood samples were again taken from the two victims, and the DNA testing proved not only that Mr. Cotton was innocent, but also identified another suspect. Mr. Cotton was then released after serving eleven years for a crime that he did not commit.

Professor Rosen stated that he was unclear as to why anyone would oppose the DNA testing provisions of House Bill 884. He said that the bill is well within the mainstream of DNA bills being passed throughout the county. He said that as he understands North Carolina law, it is unclear that defendants have a right to DNA testing. He said that in every case where an innocent person is convicted, there are two very serious harms: 1. that an innocent person is placed in prison; 2. that someone who is guilty is roaming around free.

Ms. Rebecca Britton, Beaver Holt Law Firm, Fayetteville, NC, was recognized to comment on the bill. She commented on the case of a twenty-two year old marine lance corporal, who entered a Dunkin' Donuts restaurant in 1981 and became a rape suspect because someone thought he looked like a composite. When authorities were not able to ultimately match him with the composite and get identification, hypnosis took place. The victim was hypnotized with a photograph of the marine, and was certain, following the hypnosis, that he was the rapist. Despite four alibi witnesses that placed the marine in his bunk on Camp Lejeune, he was convicted and sentenced to two life terms in prison. After nine years, it was discovered during habeas corpus proceedings that the police had hypnotized the witness. This information had never been turned over to the defense. They knew that hypnosis had taken place, but there were no details beyond that. She said that this exculpatory material that would have made a difference in the outcome of the case was withheld. She said there were audio tapes and handwritten notes from the hypnosis that made it clear that the hypnosis was suggestive and that the defendant had been planted in the victim's memory as the rapist. When this information was brought forward, the Fourth Circuit Court of Appeals released the man and overturned his conviction, but the problem did not end there because he had not been found innocent and was viewed as having gotten off on a technicality despite the major constitutional violations that took place. A case was then pursued against the police officers for withholding the exculpatory material that they knew should have been turned over to the district attorney. After three trips to the Fourth Circuit Court of Appeals and two trips to the United States Supreme Court, the civil suit against the police officers died, and the man had no remedy. The only remedy that the defendant has is the compensation statute for wrongful imprisonment. Ms. Britton said that the bill would fill a gap in the system that currently exists. She said that the foundation of judicial system is a presumption of innocence, but once a person is convicted, that presumption is gone. She said that for folks asking for DNA testing, it does not come as a right and falls on deaf ears unless the defendant is fortunate enough to have someone intervene on their behalf. She said that the problem is not only getting someone to help, but also coming up with the funds to pursue it and getting the DNA evidence to begin with. Ms. Britton said that they were told at the beginning of the case that the evidence was gone, but it was discovered in1999 in a box in the clerk's office in Jacksonville. The evidence had been preserved, but it was a yearlong battle before they were able to get the evidence tested. After multiple hearings, it was ordered that DNA testing take place.

She said that the bill not only addresses preserving the evidence, but also the cost for testing. She said our system does not have an adequate remedy in situations where there is a presumption of innocence, and this presumption disappears after conviction. She said that this bill would provide that remedy.

Ms. Britton raised a question regarding the compensation aspect of the bill. She said that if the criminal defendant foots the bill for the DNA testing, there should be some means to compensate them for meeting that burden and paying for that burden to prove their innocence. She also urged the committee to make provisions for innocent persons who have lost their livelihood and have been wrongfully imprisoned to be able to seek economic and pecuniary lost in addition to a base yearly amount up to a cap of $500,000.

Chairman Hackney stated that in Section 5 of the bill it does not appear that it is necessary to have a finding that a claimant was innocent in order to receive compensation. He reminded the committee that if a conviction is reversed, it does not mean the claimant was innocent, and being found "not guilty" does not mean a claimant is innocent. He said that the language says, "that the claimant was imprisoned and has been vindicated" and questioned if that language was intended to say the claimant was innocent. He said that the General Assembly has drawn a line between "innocence" and "procedural reversals" and has not previously paid compensation for those reversals. He questioned whether this provision would cross that line.

Discussion followed regarding the preservation and storage of biological materials. Professor Rosen stated that constitutionally, there is a prohibition of intentional destruction of evidence. He said that generally, the police attempt to preserve evidence in a way that will allow them to use it at a future trial.

Mr. Tom Lock, District Attorney, 11th District, was recognized to comment on the bill. He expressed support for the DNA testing provisions of the bill. He did state concern for Section 6 of the bill regarding the report on the administration of capital punishment laws. He stated that he felt this would impose an impossible burden upon the Division of Criminal Statistics.

Discussion followed regarding whether the bill would be an appropriation bill.

No action was taken on the bill and the meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 18, 2001

AGENDA

HOUSE BILL 643 – TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 837 – CIVIL PENALTY AUTHORITY/PUBLIC HEALTH VIOLATIONS
REPRESENTATIVE MARTHA ALEXANDER

HOUSE BILL 884 – INNOCENCE PROTECTION ACT
REPRESENTATIVE DAN BLUE

HOUSE BILL 941 – COUNTY ANTIDISCRIMINATION ORDINANCES
REPRESENTATIVE VERLA INSKO

HOUSE BILL 1127 – DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1217 – NOTIFY DRIVING WHILE IMPAIRED LIENHOLDERS IMMEDIATELY
REPRESENTATIVE JOE HACKNEY

House Bill 1276 – Close Incest Loophole to Protect Minors
Representative Martin Nesbitt

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 18, 2001 10:00 am meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeanne Dunn	NCCADV
Rex Jones	Conference of DAs
Tom Lock	DA - 11th Dist
Jim Blackburn	County Commissioners Assoc
Kim Hibbard	NCLM
Andy Romanet	NCLM.
Leslie Starsoneck	DV Commission
GD GEARING	MSJ
Mary Carmichael	REBIC
Richard Rosen	UNC Law School
Rebecca Britton	Beaver Holt Law Firm
Jo McCants	AOC
Charles Cromer	NCATL
Deb Ress	ACLU
Butch Cook	City
Annette Moore	Orange County
Stella Boswell	NCATL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 643
PROPOSED COMMITTEE SUBSTITUTE H643-CSSA-5 [v.7]

4/2/2001 2:40:02 PM

Short Title: Testimonial Privilege for Violence Victims. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH AGENTS OF RAPE CRISIS CENTERS AND DOMESTIC VIOLENCE PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.12. Communications with agents of rape crisis centers and domestic violence programs privileged.**

(a) Definitions. – The following definitions apply in this section:

(1) Agent. – An employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.

(2) Center. – A domestic violence program or rape crisis center.

(3) Domestic violence program. – A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims. The services provided may include, but are not limited to, crisis hotlines; safe homes or shelters; children of violence services; community education; counseling systems, intervention and interface; transportation and referral; and victim assistance.

(4) Domestic violence victim. – Any person alleging domestic violence as defined by G.S. 50B-1, who consults an agent of a domestic violence program for the purpose of obtaining, for themselves, advice, counseling, or other assistance concerning mental, emotional, or physical injuries suffered as a result of the domestic violence. The term shall also include those persons who have a significant relationship with a victim of domestic violence and who have sought,

for themselves, advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by the domestic violence against the victim.

(5) Rape crisis center. – Any publicly or privately funded agency, institution, organization, or facility that offers counseling and other assistance to victims of sexual assault and their families.

(6) Sexual assault. – Any alleged violation of G.S. 14-27.2, G.S. 14-27.3, G.S. 14-27.4, G.S. 14-27.5, G.S. 14-27.7, G.S. 14-27.7A, or G.S. 14-202.1, whether or not a civil or criminal action arises as a result of the alleged violation.

(7) Sexual assault victim. – Any person alleging sexual assault, who consults an agent of a rape crisis center for the purpose of obtaining, for themselves, advice, counseling, or other assistance concerning mental, physical, or emotional injuries suffered as a result of sexual assault. The term shall also include those persons who have a significant relationship with a victim of sexual assault and who have sought, for themselves, advice, counseling, or assistance concerning a mental, physical, or emotional condition caused or reasonably believed to be caused by sexual assault of a victim.

(8) Victim. – A sexual assault victim or a domestic violence victim.

(b) Privileged Communications. – No agent of a center shall be required to disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services set forth in subsections (a)(3) and (a)(7); provided, however, that this subsection shall not apply where the victim in open court waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if the court finds, by clear and convincing evidence, a good faith, specific, and reasonable basis for believing that (i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense, (ii) the evidence is not sought merely for character impeachment purposes, and (iii) the evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel. If the case is in district court the judge shall be a district court judge, and if the case is in superior court, the judge shall be a superior court judge.

Before allowing disclosure, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection. If the court finds a sufficient showing has been made, the court shall receive the records under seal and examine the records in camera and may allow disclosure of those portions of the records which the court finds contain

information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court. The privilege afforded under this subsection terminates upon the death of the victim.

(c) Duty to Report Abuse or Neglect. – Nothing in the section shall be construed to relieve any person of any duty pertaining to reporting abuse or neglect as required by law."

SECTION 2. This act becomes effective December 1, 2001, and applies to all actions and proceedings pending in the courts of this State on or after that date.

HOUSE BILL 643:
Testimonial Privilege for Violence Victims

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 18, 2001	**Summary by:**	Susan L. Sitze
Version:	H643-CSSA-5[v.7]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 643 establishes a qualified testimonial privilege for communications with agents of rape crisis centers and domestic violence programs.

CURRENT LAW: There are several qualified privileges in the current law. Some examples are: Physician/Patient, Clergyman/Communicant, Psychologist/Patient, and Marital or Family Therapist/Client. Most other qualified privileges allow the requested information to be released if the presiding judge finds that the disclosure is "necessary to a proper administration of justice".

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 643 creates a new section G.S. 8-53.12 entitled "Communications with agents of rape crisis centers and domestic violence programs privileged."

Definitions: The privilege would apply to "domestic violence victims" who seek advice, counseling or other assistance as a result of "mental, emotional, or physical injuries suffered as a result of domestic violence as defined by G.S. 50B-1. The term would also apply to persons who have a significant relationship with a domestic violence victim and seek services for themselves.

The privilege would also apply to "sexual assault victims" who seek advice, counseling, or other assistance as a result of injuries suffered from first degree rape (G.S. 14-27.2), second degree rape (G.S. 14-27.3), first degree sexual offense (G.S. 14-27.4), second degree sexual offense (G.S. 14-27.5), intercourse and sexual offenses with certain victims (G.S. 14-27.7), statutory rape or sexual offense of person who is 13, 14, or 15 years old (G.S. 14-27.7A), or taking indecent liberties with children (G.S. 14-202.1). The term would also apply to persons who have a significant relationship with a sexual assault victim and seek services for themselves.

Subject of Privilege: The privilege would prevent an agent of a domestic violence program or rape crisis center from being required to disclose information that the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services. The victim may waive the privilege in open court, and the privilege terminates upon the death of the victim.

Qualification of Privilege: Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at or prior to trial, if the court finds by clear and convincing evidence, a good faith, specific, and reasonable basis for believing that:

(i) the records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material and exculpatory upon the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense

(ii) the evidence is not sought merely for character impeachment purposes, and

(iii) The evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking the disclosure or the party's counsel.

Before allowing disclosure, the court must find that the party seeking disclosure has made a sufficient showing that the records are likely to contain information subject to disclosure under this subsection.

If the court finds a sufficient showing has been made, the court shall receive the records under seal and examine the records in camera and may allow disclosure of those portions of the records the court finds contain information subject to disclosure under this subsection. After all appeals in the action have been exhausted, any records received by the court under seal shall be returned to the center, unless otherwise ordered by the court.

The privilege does not relieve any person from the duty to report child abuse or neglect as otherwise required by law.

Effective date: The act would become effective December 1, 2001, and apply to all actions and proceedings pending in the courts of this State on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H643-CSSA-5[v.7] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
Sen.)

1 moves to amend the bill on page 2, line 25
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "in open court".
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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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 643 A BILL TO BE ENTITLED AN ACT ESTABLISHING A QUALIFIED TESTIMONIAL PRIVILEGE FOR COMMUNICATIONS WITH SEXUAL ASSAULT COUNSELORS, RAPE CRISIS CENTERS, AND DOMESTIC VIOLENCE PROGRAMS.

☐ 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 884*

Short Title:	Innocence Protection Act.	(Public)
Sponsors:	Representatives Hackney, Blue, Nesbitt, Sutton (Primary Sponsors); and Alexander.	
Referred to:	Judiciary I.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State

DNA Databank, the DNA sample shall be expunged. The DNA record, and any samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual, or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180

days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence, and if the results had been admitted in the trail resulting in the judgment there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the

DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) If the results of DNA testing conducted under this section are unfavorable to the applicant, the court:

(1) Shall dismiss the application; and

(2) In the case of an applicant who is not indigent, may assess the applicant for the cost of the testing.

(b) If the results of DNA testing conducted under this section are favorable to the applicant, the court:

(1) Shall order a hearing, notwithstanding any provision of law that would bar the hearing; and

(2) Shall enter any order that serves the interests of justice, including an order:

a. Vacating and setting aside the judgment;

b. Discharging the applicant, if the applicant is in custody;

c. Presentencing the applicant; and

d. Granting a new trial."

SECTION 4. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon any of the grounds listed below, ~~that the crime with which the person was charged either was not committed at all or was not committed by that person,~~ may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the ~~pardon.~~ pardon:

(1) The crime with which the person was charged either was not committed at all or was not committed by that person.

(2) The conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted.

(3) The person was found not guilty of the offense in a new trial or rehearing."

SECTION 5. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, ~~or~~ was not committed by the claimant, the claimant's conviction was reversed, or the claimant was found not guilty of the offense at a new

trial or rehearing, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of ~~one hundred fifty thousand dollars ($150,000).~~ five hundred thousand dollars ($500,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 6. Article 3 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.2. Report on administration of capital punishment laws.**

(a) The Division of Criminal Statistics shall annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government.

(b) The report required under subsection (a) of this section shall include the following categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought and the percentage in which it is imposed by judicial district.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(5) The percentage of capital cases in which counsel is retained by the defendant and the percentage in which counsel is appointed by the court.

(6) An analysis of the rates of compensation paid in capital cases to appointed counsel by judicial district.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside and the reasons therefor.

(8) The percentage of cases in which a person who was arrested for a crime was later eliminated as a suspect based on DNA evidence, along with the crime for which the person was arrested.

(c) The Attorney General shall ensure that the reports referred to in subsection (a) of this section are distributed to State print and broadcast media and posted on an Internet website maintained by the Department of Justice."

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 884*
PROPOSED COMMITTEE SUBSTITUTE H884-CSSA-6 [v.1]

4/9/2001 11:21:05 AM

Short Title: Innocence Protection Act. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA sample shall be expunged. The DNA record, and any

samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual, or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be

destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence using current technology, and if the results had been admitted in the trial resulting in the judgment there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) Notwithstanding any other provision of law, upon receipt of the results of the DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court:

(1) Shall dismiss the motion; and

(2) In the case of a defendant who is not indigent, may assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are favorable to the defendant, the court shall enter any order that serves the interests of justice, including an order:

(1) Vacating and setting aside the judgment;

(2) Discharging the defendant, if the defendant is in custody;

(3) Presentencing the defendant; or

(4) Granting a new trial."

SECTION 4. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter (i) be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, (ii) have the conviction reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted, or (iii) be found not guilty of the offense in a new trial or rehearing, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the ~~pardon.~~ pardon, the reversal of the conviction, or the finding of not guilty."

SECTION 5. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that (i) the claimant received a pardon of innocence for the reason that the

crime was not committed at all or was not committed by the claimant, (ii) the claimant's conviction was reversed, or (iii) the claimant was found not guilty of the offense at a new trial or rehearing, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of ~~one hundred fifty thousand dollars ($150,000).~~ five hundred thousand dollars ($500,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 6. Article 3 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.2. Report on administration of capital punishment laws.**

(a) The Division of Criminal Statistics shall annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government.

(b) The report required under subsection (a) of this section shall include the following categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought and the percentage in which it is imposed by judicial district.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(5) The percentage of capital cases in which counsel is retained by the defendant and the percentage in which counsel is appointed by the court.

(6) An analysis of the rates of compensation paid in capital cases to appointed counsel by judicial district.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside and the reasons therefor.

(8) The percentage of cases in which a person who was arrested for a crime was later eliminated as a suspect based on DNA evidence, along with the crime for which the person was arrested.

(c) The Attorney General shall ensure that the reports referred to in subsection (a) of this section are distributed to State print and broadcast media and posted on an Internet website maintained by the Department of Justice."

SECTION 7. This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date, and all actions and proceedings pending in the courts of this State, on or after that date.

HOUSE BILL 884: Innocence Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Blue
Date:	April 5, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 884 makes provisions to assist an innocent person charged with or wrongly convicted of a criminal offense in establishing the person's innocence and amends the law providing compensation to the person for a wrongful conviction.***

CURRENT LAW: North Carolina currently requires all persons convicted of certain offenses to submit a DNA sample. Those samples are tested and the results entered into a statewide database that is also shared with the federal DNA database.

BILL ANALYSIS: **Section 1** adds a new subsection to G.S. 15A-266.5 to allow criminal defendants to have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search and the name and identity of the requesting party.

Section 2 rewrites subsection (a) of G.S. 15A-266.10. The current subsection (a) allows expunction of DNA records when the person's conviction is reversed and the case dismissed. The current law requires the person to apply for expunction by the same procedure used to expunge records of criminal charges for which a person is found not guilty. The new subsection (a) makes expunction automatic upon the reversal of a conviction and the dismissal of the case, or the granting of a pardon.

Section 3 adds several new statutes to Article 13 of Chapter 15A, dealing with DNA testing. **G.S. 15A-267** requires the defendant to have pretrial access to any DNA samples and analyses performed in connection with the case in which the defendant is charged. Upon motion of the defendant, the court must order that DNA information obtained during the crime scene investigation be checked against both State and federal DNA records, and that the results of the check be disclosed to the defendant and the prosecutor upon showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

G.S. 15A-268 requires any governmental entity that collects evidence containing DNA in the course of a criminal investigation to preserve any biological material collected for as long as the defendant remains incarcerated in connection with that case. The evidence must be retained in a condition suitable for DNA testing. The governmental entity may dispose of the biological material prior to the defendant's release from incarceration only after notifying the defendant, the defendant's attorney, the public defender in the county of conviction, the district attorney in the county of conviction and the Attorney General, and only if the governmental entity does not receive, within 90 days of the notification, a request that the material not be destroyed because the requesting party will file, within 180 days, a motion for DNA testing.

G.S. 15A-269 provides for post-conviction DNA testing. It allows a defendant to make a motion for performance of DNA testing on any biological matter that: (1) is related to the investigation or prosecution that resulted in the judgment; or (2) was not previously tested, or was previously tested, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results. The court shall grant the application for DNA testing upon

its determination that if a DNA test had been conducted and the results admitted at trial there is a reasonable probability the verdict would have been more favorable to the defendant. This section requires DNA testing to be performed on any such evidence if the defendant is under a death sentence. The cost of any testing under this section shall be paid by the applicant or the State, as determined by the court.

G.S. 15A-270 provides post-test procedures. If the results of the DNA testing are unfavorable to the defendant, the court shall dismiss the application and if the defendant is not indigent, may assess the cost of the testing to the defendant. If the results of the DNA testing are favorable to the defendant the court shall order a hearing and shall enter any order that serves the interest of justice, including an order: vacating and setting aside the judgment; discharging the defendant, if the defendant is in custody; presentencing the defendant; and granting a new trial.

Section 4 amends G.S. 148-82 to allow a claim against the State for pecuniary loss for erroneous conviction and imprisonment if: (1) the person has been granted a pardon of innocence by the Governor on the grounds that the crime with which the person was charged was either not committed at all or was not committed by that person; (2) the conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted; or (3) the person was found not guilty of the offense in a new trial or rehearing.

Section 5 amends G.S. 148-84 to raise the maximum amount the Industrial Commission may award a person eligible for compensation for erroneous conviction and imprisonment from $150,000 to $500,000.

Section 6 creates a new G.S. 114-10.2 requiring the Division of Criminal Statistics to annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government. This section sets forth 8 particular categories of information that this report shall contain. The section requires the Attorney General to ensure that the reports are distributed to the media and posted on the Department of Justice website.

This act is effective when it becomes law.

HOUSE BILL 884: Innocence Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Blue
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	H884-CSSA-6[v.1] Proposed Committee Substitute offered on April 18, 2001		Committee Counsel

SUMMARY: ***House Bill 884 makes provisions to assist an innocent person charged with or wrongly convicted of a criminal offense in establishing the person's innocence and amends the law providing compensation to the person for a wrongful conviction.***

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prior test results. The court shall grant the motion for DNA testing upon its determination that if a DNA test had been conducted using current technology and the results admitted at trial there is a reasonable probability the verdict would have been more favorable to the defendant. This section requires DNA testing to be performed on any such evidence if the defendant is under a death sentence. The cost of any testing under this section shall be paid by the applicant or the State, as determined by the court.

G.S. 15A-270 provides post-test procedures. Upon receipt of the test results, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant. If the results of the DNA testing are unfavorable to the defendant, the court shall dismiss the motion and if the defendant is not indigent, may assess the cost of the testing to the defendant. If the results of the DNA testing are favorable to the defendant the court shall enter any order that serves the interest of justice, including an order: vacating and setting aside the judgment; discharging the defendant, if the defendant is in custody; presentencing the defendant; and granting a new trial.

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This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date, and all actions and proceedings pending in the courts of this State, on or after that date.

ARTICLE 13.
DNA Database and Databank.

Sec.
15A-266. Short title.
15A-266.1. Policy.
15A-266.2. Definitions.
15A-266.3. Procedural compatibility with the FBI.
15A-266.4. Blood sample required for DNA analysis upon conviction.
15A-266.5. Tests to be performed on blood sample.
15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.
15A-266.7. Procedures for conducting DNA analysis of blood sample.
15A-266.8. DNA database exchange.
15A-266.9. Cancellation of authority to exchange DNA records.
15A-266.10. Expungement.
15A-266.11. Unauthorized uses of DNA Databank; penalties.
15A-266.12. Confidentiality of records.
15A-267 through 15A-270. [Reserved.]

§ 15A-266. Short title.

This Article may be cited as the DNA Database and Databank Act of 1993.

(1993, c. 401, s. 1.)

Editor's Note. - Session Laws 1993, c. 401, s. 2 makes this Article effective December 1, 1993, only if the General Assembly appropriates funds to implement the purposes of the act. Funds have been appropriated.

Legal Periodicals. - For comment, "DNA Databases: The Case for the Combined DNA Index System," see 29 Wake Forest L. Rev. 889 (1994).

For article, "DNA Databanks: Law Enforcement's Greatest Surveillance Tools?," see 34 Wake Forest L. Rev. 767 (1999).

For article, "Genetic Testing, Genetic Medicine, And Managed Care," see 34 Wake Forest L. Rev. 849 (1999).

For article, "The Use of Genetic Testing in the Courtroom," see 34 Wake Forest L. Rev. 889 (1999).

§ 15A-266.1. Policy.

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of violent crimes against the person. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the

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perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters.

(1993, c. 401, s. 1.)

CASE NOTES

Drawing Blood for DNA Testing Constitutional. - Drawing of blood from prison inmates for deoxyribonucleic acid (DNA) sampling did not violate the fourth amendment's prohibition of unreasonable search and seizure. Sanders v. Coman, 864 F. Supp. 496 (E.D.N.C. 1994).

Force Used to Obtain DNA Samples Was Not Excessive. - Ensuring compliance with a lawful order, such as the deoxyribonucleic acid (DNA) sampling procedure, was a matter of institutional security and discipline; therefore, the actual force used did not constitute cruel and unusual punishment simply because it caused pain to the inmates involved. There were no facts or allegations that the force being used to obtain DNA samples from inmates was being applied with the intention of harming the inmates. Sanders v. Coman, 864 F. Supp. 496 (E.D.N.C. 1994).

§ 15A-266.2. Definitions.

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.

(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" in this Article means a blood sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.

(5) "FBI" means the Federal Bureau of Investigation.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law

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enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(1993, c. 401, s. 1.)

Legal Periodicals. - For comment, "DNA Databases: The Case for the Combined DNA Index System," see 29 Wake Forest L. Rev. 889 (1994).

§ 15A-266.3. Procedural compatibility with the FBI.

The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

(1993, c. 401, s. 1.)

Legal Periodicals. - For article, "DNA Databanks: Law Enforcement's Greatest Surveillance Tools?," see 34 Wake Forest L. Rev. 767 (1999).

§ 15A-266.4. Blood sample required for DNA analysis upon conviction.

(a) On or after 1 July 1994, a person who is convicted of any of the crimes listed in subsection (b) of this section shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after 1 July 1994, of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of one or more of these crimes prior to 1 July 1994 shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article include:

G.S. 14-17 - Murder in the first and second degree.

G.S. 14-27.2 - First degree rape.

G.S. 14-27.3 - Second degree rape.

G.S. 14-27.4 - First degree sexual offense.

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G.S. 14-27.5 - Second degree sexual offense.

G.S. 14-28 - Malicious castration.

G.S. 14-29 - Castration or other maiming.

G.S. 14-30 - Malicious maiming.

G.S. 14-30.1 - Malicious throwing of corrosive acid or alkali.

G.S. 14-31 - Malicious assault in secret manner.

G.S. 14-32 - Felonious assault with deadly weapon with intent to kill.

G.S. 14-32.1 - Assaults on handicapped persons.

G.S. 14-34.1 - Discharging barreled weapon or firearm into occupied property.

G.S. 14-34.2 - Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.

G.S. 14-39(a)(3) - Kidnapping for the purpose of doing serious bodily harm to the person.

G.S. 14-49 - Malicious use of explosive or incendiary.

G.S. 14-58.2 - Burning of mobile home, manufactured-type house, or recreational trailer home.

G.S. 14-202.1 - Taking indecent liberties with children.

G.S. 14-87 - Robbery with a dangerous weapon.

G.S. 14-277.3 - Stalking.
- Common law robbery.
- First degree arson.

(1993, c. 401, s. 1.)

§ 15A-266.5. Tests to be performed on blood sample.

(a) The tests to be performed on each blood sample are:

(1) To analyze and type the genetic markers contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

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d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(1993, c. 401, s. 1.)

Legal Periodicals. - For comment, "DNA Databases: The Case for the Combined DNA Index System," see 29 Wake Forest L. Rev. 889 (1994).

§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.

Each DNA sample required to be drawn pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn at a prison or jail unit to be specified by the sentencing court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample.

(1993, c. 401, s. 1.)

§ 15A-266.7. Procedures for conducting DNA analysis of blood sample.

The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.

(1993, c. 401, s. 1.)

§ 15A-266.8. DNA database exchange.

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles

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of DNA samples submitted pursuant to G.S. 15A-266.7 and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of blood samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

(1993, c. 401, s. 1.)

§ 15A-266.9. Cancellation of authority to exchange DNA records.

The SBI is authorized to revoke the right of a forensic DNA laboratory within the State to exchange DNA identification records with federal, State, or local criminal justice agencies if the required control and privacy standards specified by the SBI for the State DNA Database are not met by these agencies.

(1993, c. 401, s. 1.)

§ 15A-266.10. Expungement.

(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be

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attached to an order of expungement.

(b) Upon receipt of an order of expungement, the SBI shall purge the DNA record and all other identifiable information from the State Database and the DNA sample stored in the State Databank covered by the order. If the individual has more than one entry in the State Database and Databank, then only the entry covered by the expungement order shall be deleted from the State Database or Databank.

(1993, c. 401, s. 1.)

§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.

(a) Any person who, by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a Class 1 misdemeanor in accordance with G.S. 14-3.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a Class 1 misdemeanor in accordance with G.S. 14-3.

(1993, c. 401, s. 1; 1994, Ex. Sess., c. 14, s. 15.)

§ 15A-266.12. Confidentiality of records.

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential except as provided in G.S. 15A-266.8.

(b) Only DNA records that directly relate to the identification of individuals shall be collected and stored. These records shall not be used for any purpose other than to facilitate personal identification of an offender; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(1993, c. 401, s. 1.)

§§ 15A-267 through 15A-270: Reserved for future codification purposes.

ARTICLE 14.
Nontestimonial Identification.

Sec.

15A-271. Authority to issue order.
15A-272. Time of application; additional investigative procedures not precluded.

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ARTICLE 8.
Compensation to Persons Erroneously Convicted of Felonies.

Sec.
148-82. Provision for compensation.
148-83. Form, requisites and contents of petition; nature of hearing.
148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

§ 148-82. Provision for compensation.

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the pardon.

(1947, c. 465, s. 1; 1997-388, s. 1.)

Editor's Note. - Session Laws 1997-443, s. 7.2(b), rewrites Session Laws 1997-388, s. 5 to provide in part that notwithstanding the five year limitation set forth in G.S. 148-82, as rewritten by s. 1, the petition of a person who has received a pardon of innocence prior to July 1, 1995, may be presented at any time prior to July 1, 1998, and this act shall apply to that petition, regardless of any prior claims for compensation filed and settled or otherwise resolved. If the petitioner has received compensation pursuant to a prior claim, the Industrial Commission shall consider the amount of the award received by the petitioner and may deduct that amount, plus interest, from the date the award was made, from an award granted pursuant to this act.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Legal Periodicals. - For brief comment on this Article, see 25 N.C.L. Rev. 403 (1947).

§ 148-83. Form, requisites and contents of petition; nature of hearing.

Such petition shall be addressed to the Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor.

(1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 2.)

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§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of one hundred fifty thousand dollars ($150,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes.

(1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 3.)

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House Judiciary I Committee

April 18, 2001
PM meeting

Minutes

The House Judiciary I Committee met on Wednesday April 18, 2001 at 1:00 p.m. in Room 1228 of the Legislative Building to continue the agenda from the 10:00 am meeting. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Gray, Nesbitt, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Martha Alexander was recognized for an explanation of House Bill 837, AN ACT TO AUTHORIZE CERTAIN BOARDS OF COUNTY COMMISSIONERS TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF PUBLIC HEALTH LAWS OR RULES, (Attachment III). Representative Alexander said that the bill would authorize a board of county commissions that has jurisdiction over its local board of health to be able to pass health ordinances. This applies to counties with a population of 425, 000 or more people. The bill would allow county commission discretion in deciding whether violations should be punishable by misdemeanor or civil penalty.

Chairman Hackney asked if Mecklenburg County is the only county that has the authority to administer public health laws.

Mr. Rick Zechini, Committee Counsel, replied that Wake County now has the authority to do so.

Following committee discussion, Representative Gray moved that the bill be given a favorable report. The motion carried, (Attachment IV).

The committee returned to House Bill 884, AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR WRONGFUL CONVICTION, (Attachment V). The bill was explained and discussed during the 10:00 a.m. meeting of the committee, and a proposed committee substitute was adopted for the purpose of discussion, (Attachment VI). Representative Blue indicated that he would like to remove Sections 5 and 6 of the bill having to do with an increase in the compensation and the collection of data. He stated that the concept of the preservation of DNA samples and rules relating to the preservation are an important concept that needs to be advanced.

Chairman Hackney noted that Section 4 should probably also be removed.

Representative Blue offered an amendment, (Attachment VII), and moved its adoption. The amendment was adopted.

Representative Blue moved a favorable report for a new committee substitute incorporating the amendment, but not for an unfavorable report for the original bill.

Representative Nesbitt offered an amendment resulting from his question during the 10:00 meeting regarding biological material. He had raised the question as to what a "biological sample" was, noting that it might be an entire body. He offered the amendment, (Attachment VIII), and moved its adoption. The motion carried.

The motion now before the committee was to roll the two amendments into a new committee substitute, that the committee substitute be given a favorable report, but the original bill not yet to be given an unfavorable report.

Representative Sutton asked for clarification of the motion.

Representative Blue replied that the committee substitute would receive a favorable report and the original bill would still exist, if the committee does not take adverse action against the language that was in the original bill.

Chairman Hackney stated that the purpose of the motion is to allow that the $150,000 part of the bill, which will presumably surface in a later bill, not be the subject of an unfavorable report.

The motion carried, (Attachment VIII).

Vice-Chairman Blue presided over the discussion of House Bill 1217, AN ACT TO REQUIRE THAT LIENHOLDERS BE NOTIFIED IMMEDIATELY WHEN A MOTOR VEHICLE IS SUBJECT TO FORFEITURE FOR IMPAIRED DRIVING AFTER IMPAIRED DRIVING LICENSE REVOCATION, (Attachment IX). Chairman Hackney was recognized for an explanation of the bill. He offered a proposed committee substitute, (Attachment X), and moved that it be adopted for the purpose of discussion. The motion carried.

Chairman Hackney reminded the members of the bill which provides that repeat drunk drivers are subject to having their car seized, and later forfeited under certain conditions. He stated that the object of the bill is to attempt to speed up notification to lienholders. He said that the previous problem of having cars sitting around on lots of local school boards has been solved. The cars are now taken to Cumberland County within a day or two of their seizure to await final action of either forfeiture or release to one of the lienholders. He said that some of the lienholders have complained that they need time to try to get the cars released before they are taken to Cumberland County. He said that this bill is an attempt to try and help the lienholders.

Discussion followed regarding the way in which lienholders are currently notified. A copy of the statutes regarding seizure, impoundment, and forfeiture of motor vehicles for offenses involving impaired driving is attached, (Attachment XI).

Chairman Hackney stated that another suggested remedy would be to keep the cars locally for at least five days and noted that if the bill might be changed in this way if it makes it over to the Senate.

He added that the reason that the cars are picked up quickly is that under the state contract, there is a $10 daily storage fee payable to whoever is holding the car.

The bill was displaced until a future meeting.

Representative Nesbitt was recognized for an explanation of House Bill 1276, AN ACT TO CLOSE THE LEGAL LOOPHOLE THAT EXISTS UNDER THE STATE'S INCEST LAWS AND TO EQUALIZE PUNISHMENTS FOR CRIMES COMMITTED AGAINST CHILDREN WITHOUT REGARD TO FAMILIAL STATUS, (Attachment XII).

Representative Nesbitt offered an amendment, (Attachment XIII), and moved its adoption. He said that the amendment moves the bill down to where the child abuse laws and the statutory rape laws cover children less than 16 years of age. He moved adoption of the amendment. The motion carried. He said that the bill resulted from national attention being given to the issue. He stated that the bill would clean up statutes so that a case of incest is punished at the harsher penalties for molestation crimes and would leave the incest statutes in place when one becomes 16 years of age or older.

Ms. Susan Sitze, Committee Counsel, commented briefly on the bill. A copy of her bill analysis and case law are attached, (Attachment s XIV and XV).

Representative Alexander moved that the amendment be rolled into a committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment XVI). A copy of the committee substitute is attached, (Attachment XVII).

Representative Insko was recognized for an explanation of House Bill 941, AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION, (Attachment XVIII). She offered a proposed committee substitute, (Attachment XIX), and moved that it be adopted for the purpose of discussion. The motion carried. She said that the bill was introduced because a question has been raised about whether or not the existing human rights ordinances and commissions that have been created through local bills can legally exist. The bill would serve as an umbrella for all of those existing commissions and ordinances. She said that the proposed committee substitute would limit the basis of discrimination to those protected classes that now appear in the local ordinances and have already been approved by the General Assembly. She said that all are protected classes under either the Civil Rights Act, or through federal housing or federal consumer laws and does not extend the current authorization for protected classes and does not allow these local commissions to extend their protection to other classes. Representative Insko said that the bill simply creates a state statute to replace the local bills that have already been passed.

Chairman Hackney added that there had been a court challenge based on the question of the authority and uniformity of the local bills.

Representative Nesbitt stated that Buncombe County enacted one of the local ordinances and that it had worked very well.

A bill analysis prepared by Ms. Sitze and Frank Folger, Committee Counsel, is attached, (Attachment XX).

Mr. John Rustin, North Carolina Family Policy Council, was recognized and expressed concern regarding the classification of marital status and noted that his earlier concerns had been addressed in the committee substitute.

No action was taken, and the bill was held over for a future meeting.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 18, 2001

AGENDA

HOUSE BILL 643 – TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 837 – CIVIL PENALTY AUTHORITY/PUBLIC HEALTH VIOLATIONS
REPRESENTATIVE MARTHA ALEXANDER

HOUSE BILL 884 – INNOCENCE PROTECTION ACT
REPRESENTATIVE DAN BLUE

HOUSE BILL 941 – COUNTY ANTIDISCRIMINATION ORDINANCES
REPRESENTATIVE VERLA INSKO

HOUSE BILL 1127 – DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1217 – NOTIFY DRIVING WHILE IMPAIRED LIENHOLDERS IMMEDIATELY
REPRESENTATIVE JOE HACKNEY

House Bill 1276 – Close Incest Loophole to Protect Minors
Representative Martin Nesbitt

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 18, 2001 1:00 pm meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Osborne	AOC
Jordan Kurtz	NCFPC
Annette Moore	Orange County
Brian Francis	Meck Cnty
John Motley	Office of Governor
Reg Bowen	NC Conference of DAs
Tom Lock	DA - 11th Dist.
Tiffany Barger	Intern
Monica Jones	
BRUCE THOMPSON	PARTNER FOR ADAMS & BRANSTEW, LLP
Carl Ludolph	CJLC
Jennifer Sullivan	NASW-NC
Deb Rood	ACLU
Kim Gibbard	NCLM
Jay J. Chaudhuri	DOJ
MARK CREECH	CAL
Paula A. Wolf	Covenant w/NC's Children

by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county."

SECTION 2. 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 837 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CERTAIN BOARDS OF COUNTY COMMISSIONERS TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF PUBLIC HEALTH LAWS OR RULES.

☒ 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 884*

Short Title:	Innocence Protection Act.	(Public)
Sponsors:	Representatives Hackney, Blue, Nesbitt, Sutton (Primary Sponsors); and Alexander.	
Referred to:	Judiciary I.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State

DNA Databank, the DNA sample shall be expunged. The DNA record, and any samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual, or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180

days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence, and if the results had been admitted in the trail resulting in the judgment there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the

DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) If the results of DNA testing conducted under this section are unfavorable to the applicant, the court:

(1) Shall dismiss the application; and

(2) In the case of an applicant who is not indigent, may assess the applicant for the cost of the testing.

(b) If the results of DNA testing conducted under this section are favorable to the applicant, the court:

(1) Shall order a hearing, notwithstanding any provision of law that would bar the hearing; and

(2) Shall enter any order that serves the interests of justice, including an order:

a. Vacating and setting aside the judgment;

b. Discharging the applicant, if the applicant is in custody;

c. Presentencing the applicant; and

d. Granting a new trial."

SECTION 4. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon any of the grounds listed below, ~~that the crime with which the person was charged either was not committed at all or was not committed by that person,~~ may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the ~~pardon.~~ pardon:

(1) The crime with which the person was charged either was not committed at all or was not committed by that person.

(2) The conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted.

(3) The person was found not guilty of the offense in a new trial or rehearing."

SECTION 5. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, ~~or~~ was not committed by the claimant, the claimant's conviction was reversed, or the claimant was found not guilty of the offense at a new

trial or rehearing, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of ~~one hundred fifty thousand dollars ($150,000).~~ five hundred thousand dollars ($500,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 6. Article 3 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.2. Report on administration of capital punishment laws.**

(a) The Division of Criminal Statistics shall annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government.

(b) The report required under subsection (a) of this section shall include the following categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought and the percentage in which it is imposed by judicial district.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(5) The percentage of capital cases in which counsel is retained by the defendant and the percentage in which counsel is appointed by the court.

(6) An analysis of the rates of compensation paid in capital cases to appointed counsel by judicial district.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside and the reasons therefor.

(8) The percentage of cases in which a person who was arrested for a crime was later eliminated as a suspect based on DNA evidence, along with the crime for which the person was arrested.

(c) The Attorney General shall ensure that the reports referred to in subsection (a) of this section are distributed to State print and broadcast media and posted on an Internet website maintained by the Department of Justice."

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 884*
PROPOSED COMMITTEE SUBSTITUTE H884-CSSA-6 [v.1]

4/9/2001 11:21:05 AM

Short Title: Innocence Protection Act. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA sample shall be expunged. The DNA record, and any

samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual, or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be

destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence using current technology, and if the results had been admitted in the trial resulting in the judgment there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) Notwithstanding any other provision of law, upon receipt of the results of the DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court:

(1) Shall dismiss the motion; and

(2) In the case of a defendant who is not indigent, may assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are favorable to the defendant, the court shall enter any order that serves the interests of justice, including an order:

(1) Vacating and setting aside the judgment;

(2) Discharging the defendant, if the defendant is in custody;

(3) Presentencing the defendant; or

(4) Granting a new trial."

SECTION 4. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter (i) be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, (ii) have the conviction reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted, or (iii) be found not guilty of the offense in a new trial or rehearing, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the ~~pardon.~~ pardon, the reversal of the conviction, or the finding of not guilty."

SECTION 5. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that (i) the claimant received a pardon of innocence for the reason that the

crime was not committed at all or was not committed by the claimant, (ii) the claimant's conviction was reversed, or (iii) the claimant was found not guilty of the offense at a new trial or rehearing, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of ~~one hundred fifty thousand dollars ($150,000).~~ five hundred thousand dollars ($500,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 6. Article 3 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.2. Report on administration of capital punishment laws.**

(a) The Division of Criminal Statistics shall annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government.

(b) The report required under subsection (a) of this section shall include the following categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought and the percentage in which it is imposed by judicial district.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(5) The percentage of capital cases in which counsel is retained by the defendant and the percentage in which counsel is appointed by the court.

(6) An analysis of the rates of compensation paid in capital cases to appointed counsel by judicial district.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside and the reasons therefor.

(8) The percentage of cases in which a person who was arrested for a crime was later eliminated as a suspect based on DNA evidence, along with the crime for which the person was arrested.

(c) The Attorney General shall ensure that the reports referred to in subsection (a) of this section are distributed to State print and broadcast media and posted on an Internet website maintained by the Department of Justice."

SECTION 7. This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date, and all actions and proceedings pending in the courts of this State, on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H884-CSSA-6[v.1] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Blue
Sen.)

1 moves to amend the bill on page 4, line ~~00~~ 19
2 ( ) WHICH CHANGES THE TITLE through page 6 line 9
3 by deleting those lines
4
5 and by renumbering the remaining sections accordingly
6
7
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VIII**

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 824 DATE April 18, 2001

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbitt / Blue
~~Sen.~~)

1 moves to amend the bill on page 2, line 26
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting that line to read:
4
5 "evidence containing DNA shall preserve a
6
7 sample of any biological material secured
8
9 in connection"
10
11
12
13
14
15
16
17
18
19

SIGNED Martin Nesbitt
by

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Blue / Nesbitt
4-18 - pm

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 884 A BILL TO BE ENTITLED AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

☐ 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,~~ but not 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

FILED
1217 MAR 11 01
HOUSE PRINCIPAL CLERK

H D

HOUSE DRH4130-LK-164 (03/28)

HB 1217

Short Title: Notify DWI Lienholders Immediately. (Public)

Sponsors: Representative Hackney.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT LIENHOLDERS BE NOTIFIED IMMEDIATELY WHEN A MOTOR VEHICLE IS SUBJECT TO FORFEITURE FOR IMPAIRED DRIVING AFTER IMPAIRED DRIVING LICENSE REVOCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.3(b) reads as rewritten:

"(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall immediately notify the registered owner of the motor vehicle, if the owner was not driving the motor vehicle, and any lienholder holding a perfected security interest in the motor vehicle and the seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section."

SECTION 2. This act becomes effective January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 1217
PROPOSED COMMITTEE SUBSTITUTE H1217-CSSA-11 [v.3]

4/17/2001 9:00:01 PM

Short Title: Notify DWI Lienholders Immediately. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS AND INNOCENT MOTOR VEHICLE OWNERS WHEN A MOTOR VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.3(b) reads as rewritten:

"(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than ~~72~~ 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section.

SECTION 2. G.S. 20-28.3(b1) reads as rewritten:

"(b1) Notification of Impoundment. – Within ~~48~~ 24 hours of receipt within regular business hours of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. ~~This notice~~The notification of impoundment shall be sent by first-class mail to the most recent address

contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

SECTION 3. This act becomes effective January 1, 2002.

§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.

(a) Motor Vehicles Subject to Seizure. - A motor vehicle that is driven by a person who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. - If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section.

(b1) Notification of Impoundment. - Within 48 hours of receipt of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. - Upon determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met,

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shall order the motor vehicle held. The magistrate may request additional information and may hear from the defendant if the defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. - An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. - Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is under the constructive possession of the county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. Absent a statewide or regional contract that provides otherwise, each county board of education may elect to have seized motor vehicles stored on property owned or leased by the county board of education and charge a reasonable fee for storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county board of education may contract with a commercial towing and storage facility or other private entity for the towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ten dollars ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant

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to this subsection.

(e) Release of Motor Vehicle Pending Trial. - A motor vehicle owner, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a nondefendant motor vehicle owner conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been seized for not less than 24 hours;

(2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

(3) A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) Execution of an acknowledgment as described in G.S. 20-28.2(a1);

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. - A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an

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innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. - A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -

(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing,

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shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. **(Effective until July 1, 2001)** The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

c. **(Effective July 1, 2001)** The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

(2) The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a seized motor vehicle while the motor vehicle is subject to forfeiture, or a forfeited motor vehicle after the forfeiture hearing, to:

a. The defendant;

b. The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or

c. Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

(f), (g) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

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(h) Insurance Proceeds. - In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company liable for the damages to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. - In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the outstanding towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall be conducted in accordance with the provisions of G.S. 20-28.5(a), and the proceeds of the sale, after the payment of outstanding towing and storage costs or reimbursement of towing and storage costs paid by a person other than the defendant, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. - At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

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(k) County Board of Education Right to Appear and Participate in Proceedings. - The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(*l*) Payment of Fees Upon Conviction. - If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. - District court trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a "compelling reason" for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party who has not previously been heard on a petition for pretrial release under subsections (e1) or (e3) of this section or any

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party whose motor vehicle has not been the subject of a forfeiture hearing held pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to subsections (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was released pursuant to subsection (e) of this section pending trial in district court, the release of the motor vehicle continues, and the terms and conditions of the original bond remain the same as those required for the initial release of the motor vehicle under subsection (e) of this section, pending the resolution of the underlying offense involving impaired driving in superior court.

(1997-379, s. 1.2; 1997-456, s. 31; 1998-182, s. 3; 1998-217, s. 62(a)-(c); 2000-169, s. 29.)

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§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of "Impaired Driving License Revocation". - The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2).

(a1) Definitions. - As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. - A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair Market Value. - The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent Owner. - A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked; or

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

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c. Whose vehicle was reported stolen;

d. Repealed by Session Laws 1999-406, s. 17, effective December 1, 1999.

e. Who is in the business of renting vehicles, and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. - Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. - Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. - A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. - A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. - An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

(5) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(6) Registered Owner. - A person in whose name a registration card for a motor vehicle is issued at the time of seizure.

(7) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. - If at a sentencing hearing for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. - In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture

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under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. - If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) Forfeiture Hearing. - Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent owner as defined in this section, in which case the trial judge shall order the motor vehicle released to the innocent owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall:

(1) a. Authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

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b. Order the motor vehicle released to a lienholder pursuant to the provisions of subsection (f) of this section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) Release of Vehicle to Innocent Motor Vehicle Owner. - At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately

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reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. - At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the lienholder;

(4) The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) **(Effective until July 1, 2001)** The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

(5) **(Effective July 1, 2001)** The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

(g) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

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(1983, c. 435, s. 21; 1983 (Reg. Sess., 1984), c. 1101, s. 19; 1989 (Reg. Sess., 1990), c. 1024, s. 6; 1997-379, s. 1.1; 1997-456, s. 30; 1998-182, s. 2; 1999-406, ss. 11, 12, 17; 2000-169, s. 28.)

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1276

Short Title: Close Incest Loophole to Protect Minors. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CLOSE THE LEGAL LOOPHOLE THAT EXISTS UNDER THE STATE'S INCEST LAWS AND TO EQUALIZE PUNISHMENTS FOR CRIMES COMMITTED AGAINST CHILDREN WITHOUT REGARD TO FAMILIAL STATUS.

Whereas, despite the progress made in modernizing laws to protect children in North Carolina, a little-known loophole exists in the General Statutes of North Carolina that has very troubling consequences for some abused children; and

Whereas, this loophole allows far lesser penalties for perpetrators convicted of sexually assaulting their own children than for those who rape or molest other children; and

Whereas, this unintended disparity is the result of archaic incest laws that date to 1879, statutes that were originally intended to limit intermarriage among family members but now hamper modern efforts to fight sexual abuse of children.; and

Whereas, this double standard, that essentially rewards perpetrators for the most unthinkable betrayal of a child's trust, does not reflect the values and goals of the citizens of North Carolina; and

Whereas, criminals who sexually assault children should be prosecuted without regard to familial relationship; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-178 reads as rewritten:

"**§ 14-178. Incest between certain near relatives.**

(a) The parties shall be guilty of a felony in all cases of carnal intercourse between (i) grandparent and grandchild, (ii) parent and child or stepchild or legally adopted child, or (iii) brother and sister of the half or whole blood.

(b) Every such offense is punishable as a Class F felony.

(c) This section applies only if the parties are 18 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and

committed against a minor is unlawful and shall be prosecuted as provided under other provisions of applicable law."

SECTION 2. G.S. 14-179 reads as rewritten:

"**§ 14-179. Incest between uncle and niece and nephew and aunt.**

(a) In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a Class 1 misdemeanor.

(b) This section applies only if the parties are 18 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and committed against a minor is unlawful and shall be prosecuted as provided under other provisions of applicable law."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XIV**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1276 DATE April 18, 2001

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbitt
)
Sen.)

moves to amend the bill on page 2, lines 1 and 9

( ) WHICH CHANGES THE TITLE

by deleting the word "18" and replacing it with "16" each time it appears.

and on page 2, line 2, and page 2, line 10 by adding after the word "minor" the phrase "~~[illegible]~~ under 16 years old." each time it appears.

and on page 2, line 3 and page 2, line 11 by adding after the word "minor" and before the word "is" the phrase "under 16 years old" each time it appears.

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Needle
4-18 pm

ATTACHMENT XV

HOUSE BILL 1276:
Close Incest Loophole to Protect Minors

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Nesbitt
Date:	April 18, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1276 changes the State's incest laws and equalizes punishments for crimes committed against children without regard to familial status.***

CURRENT LAW: G.S. 14-178 provides a Class F felony in all cases of "carnal intercourse" between grandparent & grandchild, parent & child/stepchild/adopted child, or brother & sister of the half or whole blood. G.S. 14-179 provides a Class 1 misdemeanor for the same conduct between uncle & niece, or nephew & aunt. The current incest laws apply to the family members contained in the statutes without regard to the ages of the parties involved.

BILL ANALYSIS: House Bill 1276 amends these two statutes to provide that they do not apply if one of the parties to the incest is a minor.

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

§ 14-178. Incest between certain near relatives.

The parties shall be guilty of a felony in all cases of carnal intercourse between (i) grandparent and grandchild, (ii) parent and child or stepchild or legally adopted child, or (iii) brother and sister of the half or whole blood. Every such offense is punishable as a Class F felony.

(1879, c. 16, s. 1; Code, s. 1060; Rev., s. 3351; 1911, c. 16; C.S., s. 4337; 1965, c. 132; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1192; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. - For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Legal Periodicals. - For comment, "The Amy Jackson Law - A Look at the Constitutionality of North Carolina's Answer to Megan's Law," see 20 Campbell L. Rev. 347 (1998).

CASE NOTES

The crime of incest is purely statutory. State v. Rogers, 260 N.C. 406, 133 S.E.2d 1 (1963).

Incest was not indictable at common law. State v. Sauls, 190 N.C. 810, 130 S.E. 848 (1925); State v. Broadway, 157 N.C. 598, 72 S.E. 987 (1911).

Incest, although punished by the ecclesiastical courts of England as an offense against good morals, is not at common law an indictable offense. State v. Rogers, 260 N.C. 406, 133 S.E.2d 1 (1963).

Incest requires carnal intercourse. State v. Gregory, 78 N.C. App. 565, 338 S.E.2d 110 (1985), appeal dismissed and cert. denied, 316 N.C. 382, 342 S.E.2d 901 (1986).

Intercourse with Daughter. - A father violates this section and by reason thereof is guilty of the statutory felony of incest if he has sexual intercourse, either habitual or in a single instance, with a woman or girl whom he knows to be his daughter in fact, regardless of whether she is his legitimate or his illegitimate child. State v. Wood, 235 N.C. 636, 70 S.E.2d 665 (1952); State v. Rogers, 260 N.C. 406, 133 S.E.2d 1 (1963); State v. Vincent, 278 N.C. 63, 178 S.E.2d 608 (1971); State v. Harvell, 45 N.C. App. 243, 262 S.E.2d 850, appeal dismissed, 300 N.C. 200, 269 S.E.2d 626 (1980).

Carnal intercourse by the father with his illegitimate daughter constitutes the offense. State v. Lawrence, 95 N.C. 659 (1886); Strider v. Lewey, 176 N.C. 448, 97 S.E. 398 (1918).

Both parties are not necessarily guilty. Strider v. Lewey, 176 N.C. 448, 97 S.E. 398 (1918).

Evidence. - The crime of felonious incest has as an element that the defendant and the other participant be related in one of three enumerated familial ways, including parent-child. Thus, to prove one element of the offense in the case at hand, it was necessary to establish the parent-child relationship and it was error to then use the evidence of this relationship to find that defendant took advantage of a position of trust or confidence. State v. Hughes, 114 N.C. App. 742, 443 S.E.2d 76, cert. denied, 337 N.C. 697, 448 S.E.2d 536 (1994).

Failure to Charge "Carnal" Knowledge. - The mere fact that indictment failed to charge "carnal"

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knowledge is not a fatal defect that would sustain the defendant's motion to quash the indictment. State v. Sauls, 190 N.C. 810, 130 S.E. 848 (1925).

Corroboration of Prosecutrix' Testimony Not Required. - There is no statute providing that the testimony of the prosecutrix must be corroborated by the evidence of others in a prosecution for incest. In consequence, a conviction for incest may be had against a father upon the uncorroborated testimony of the daughter if such testimony suffices to establish all of the elements of the offense beyond a reasonable doubt. State v. Wood, 235 N.C. 636, 70 S.E.2d 665 (1952); State v. Vincent, 278 N.C. 63, 178 S.E.2d 608 (1971).

Parental Immunity Doctrine Inapplicable. - Minor plaintiffs' action against their father for willfully assaulting, abusing, molesting and raping them was improperly dismissed under the provisions of § 1A-1, Rule 12(b)(6) on the ground that the action was barred by the parental immunity doctrine. Doe ex rel. Connolly v. Holt, 103 N.C. App. 516, 405 S.E.2d 807 (1991), aff'd, 332 N.C. 90, 418 S.E.2d 511 (1992).

Where a father's acts against his minor daughters constituted incest in violation of this section, second degree rape in violation of § 14-27.3, and second degree sexual offense in violation of § 14-27.5, and caused plaintiffs to suffer permanent physical, emotional and mental injuries, the doctrine of parental immunity will not bar a civil suit against him. Doe ex rel. Connolly v. Holt, 103 N.C. App. 516, 405 S.E.2d 807 (1991), aff'd, 332 N.C. 90, 418 S.E.2d 511 (1992).

Evidence of Acts Other Than Those Charged in Indictment. - In a prosecution for incest, evidence of acts of incestuous intercourse between the prosecuting witness and defendant other than those charged in the indictment, whether prior or subsequent thereto, is admissible to corroborate the proof of the act relied upon for conviction. State v. Austin, 285 N.C. 364, 204 S.E.2d 675 (1974).

Proof of other similar acts is competent in corroboration. State v. Broadway, 157 N.C. 598, 72 S.E. 987 (1911).

In prosecution for incest, evidence tending to show that defendant had had prior sexual contact with the prosecuting witness was reasonably probative of defendant's knowledge, opportunity, intent and plan, and was not so prejudicial as to outweigh its probative value and render it inadmissible; moreover, even if there was error in the admission of such evidence, absent a showing of a reasonable possibility that a different result would have been reached had the evidence been excluded, any possible error would be considered harmless. State v. Cameron, 83 N.C. App. 69, 349 S.E.2d 327 (1986).

Confessions of the wife to the husband are not admissible in a trial for incest. State v. Brittain, 117 N.C. 783, 23 S.E. 433 (1895). But see § 8-57.

Testimony of Other Daughter as to Similar Acts. - In a prosecution under this section for an offense allegedly committed upon defendant's daughter, testimony of an older daughter that within the past three years defendant several times had made to her improper advances of a similar nature, was competent solely for the purpose of showing intent or guilty knowledge. State v. Edwards, 224 N.C. 527, 31 S.E.2d 516 (1944).

Statements Made by Prosecutrix to Witnesses. - The trial court in an incest prosecution did not err in permitting repeated testimony by other witnesses of statements allegedly made to them by the prosecuting witness regarding defendant's acts toward her since the trial judge has wide discretion in allowing corroborative testimony. State v. Pollock, 50 N.C. App. 169, 273 S.E.2d 501 (1980).

Prosecutrix May Not Be Bastardized by Mother. - In a prosecution under this section, the married mother of the prosecutrix may not testify that defendant, a person not her husband, is the natural father of the prosecutrix, since a mother will not be permitted to bastardize her own issue and testify to illicit relations, except in an action which directly involves the parentage of the child, and, the prosecutrix having been born in wedlock, the law will conclusively presume legitimacy in the absence of evidence that the father was impotent or could not have had access. State v. Rogers, 260 N.C. 406, 133 S.E.2d 1 (1963).

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Sufficiency of Evidence. - Where defendant was charged with incest in violation of this section, and the State's evidence established that defendant had sexual intercourse with his stepchild, and that defendant knew the person was related to him, the three elements of the crime of incest were sufficiently established as a matter of law and this was sufficient evidence of a violation of this section to take to a jury. State v. Collins, 44 N.C. App. 27, 259 S.E.2d 802 (1979), cert. denied, 299 N.C. 322, 265 S.E.2d 399 (1980).

The State introduced sufficient evidence of penetration to permit a rational trier of fact to find beyond a reasonable doubt that the defendant committed the offenses of incest and rape, where the child victim testified at trial that her father had penetrated her, even though there were discrepancies in her extrajudicial statements to others and in her trial testimony with regard to the manner, extent and frequency of the penetration. State v. Bruce, 315 N.C. 273, 337 S.E.2d 510 (1985).

Aggravating Factors in Sentencing. - Evidence that defendant pled guilty to one count of incest with his 15-year-old daughter, but that defendant's incestuous relationship with his daughter began when she was 12 years old supported the trial court's findings of the factor in aggravation provided for in § 15A-1340.4(a)(1)j. State v. Jackson, 70 N.C. App. 782, 321 S.E.2d 169 (1984).

Applied in State v. Rhodes, 290 N.C. 16, 224 S.E.2d 631 (1976); State v. Britt, 93 N.C. App. 126, 377 S.E.2d 79 (1989).

Cited in State v. Mizelle, 15 N.C. App. 583, 190 S.E.2d 277 (1972); State v. Hosey, 79 N.C. App. 196, 339 S.E.2d 414 (1986); State v. Banks, 322 N.C. 753, 370 S.E.2d 398 (1988).

§ 14-179. Incest between uncle and niece and nephew and aunt.

In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a Class 1 misdemeanor.

(1879, c. 16, s. 2; Code, s. 1061; Rev., s. 3352; C.S., s. 4338; 1993, c. 539, s. 118; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Intercourse with Daughter of Half-Sister. - It has been held under this section that carnal intercourse of a man with the daughter of his half-sister is incest. State v. Harris, 149 N.C. 513, 62 S.E. 1090 (1908).

Cited in State v. Banks, 322 N.C. 753, 370 S.E.2d 398 (1988).

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1276 A BILL TO BE ENTITLED AN ACT TO CLOSE THE LEGAL LOOPHOLE THAT EXISTS UNDER THE STATE'S INCEST LAWS AND TO EQUALIZE PUNISHMENTS FOR CRIMES COMMITTED AGAINST CHILDREN WITHOUT REGARD TO FAMILIAL STATUS.

☐ 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 1276
PROPOSED COMMITTEE SUBSTITUTE H1276-PCS6246-SA-12

Short Title: Close Incest Loophole to Protect Minors. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CLOSE THE LEGAL LOOPHOLE THAT EXISTS UNDER THE STATE'S INCEST LAWS AND TO EQUALIZE PUNISHMENTS FOR CRIMES COMMITTED AGAINST CHILDREN WITHOUT REGARD TO FAMILIAL STATUS.

Whereas, despite the progress made in modernizing laws to protect children in North Carolina, a little-known loophole exists in the General Statutes of North Carolina that has very troubling consequences for some abused children; and

Whereas, this loophole allows far lesser penalties for perpetrators convicted of sexually assaulting their own children than for those who rape or molest other children; and

Whereas, this unintended disparity is the result of archaic incest laws that date to 1879, statutes that were originally intended to limit intermarriage among family members but now hamper modern efforts to fight sexual abuse of children; and

Whereas, this double standard, that essentially rewards perpetrators for the most unthinkable betrayal of a child's trust, does not reflect the values and goals of the citizens of North Carolina; and

Whereas, criminals who sexually assault children should be prosecuted without regard to familial relationship; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-178 reads as rewritten:

"**§ 14-178. Incest between certain near relatives.**

(a) The parties shall be guilty of a felony in all cases of carnal intercourse between (i) grandparent and grandchild, (ii) parent and child or stepchild or legally adopted child, or (iii) brother and sister of the half or whole blood.

(b) Every such offense is punishable as a Class F felony.

(c) This section applies only if the parties are 16 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and

committed against a minor under 16 years old, is unlawful and shall be prosecuted as provided under other provisions of applicable law."

SECTION 2. G.S. 14-179 reads as rewritten:

"**§ 14-179. Incest between uncle and niece and nephew and aunt.**

(a) In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a Class 1 misdemeanor.

(b) This section applies only if the parties are 16 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and committed against a minor under 16 years old, is unlawful and shall be prosecuted as provided under other provisions of applicable law."

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

H 1

HOUSE BILL 941*

Short Title:	County Antidiscrimination Ordinances.	(Public)
Sponsors:	Representatives Insko and Hackney.	
Referred to:	Judiciary I.	

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited include, but are not limited to, race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during

an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party where the Commission has failed to make a determination on the issue of reasonable cause in a timely manner; determines that reasonable cause does not exist; where conciliation efforts have failed; and where the Commission has made a determination that there is probable cause to believe that discrimination took place.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or

parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city or county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to cities and counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 941*
PROPOSED COMMITTEE SUBSTITUTE H941-CSSO-20 [v.2]

4/18/2001 9:13:24 AM

Short Title: County Antidiscrimination Ordinances. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by

the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 2. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-199. Ordinance prohibiting discrimination.**

(a) A city may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any city that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil

Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The city may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the city.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) This section applies to cities with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 941:
County Antidiscrimination Ordinances

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Insko & Hackney
Date:	April 17, 2001	**Summary by:**	Susan Sitze and Frank W. Folger Committee Counsel
Version:	First[t] Edition		

SUMMARY: ***House Bill 941 authorizes cities and counties in North Carolina with populations of 100,000 or more to enact ordinances prohibiting discrimination.***

BILL ANALYSIS: House Bill 941 authorizes cities and counties with populations of 100,000 or more to enact ordinances prohibiting discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

A city or county may adopt procedures and delegate powers to a Human Relations Commission necessary to carry out and enforce the ordinance. The city or county may also delegate these powers to an administrative department of the county. The Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints alleging a violation of the ordinance.

(2) Conducting investigations into the basis of complaints, including the power to issue subpoenas.

(3) Applying to the superior court for injunctive relief.

(4) Making a determination of whether or not there is reasonable cause to believe an unlawful discriminatory practice has occurred.

(5) Dismissing complaints where reasonable cause does not exist.

(6) Issuing a right-to-sue letter to a complaining party

(7) Attempting to conciliate a resolution of the complaint.

(8) Entering into conciliation agreements when conciliation has been successful.

(9) Administrative cause determinations.

Complainants who receive a right-to-sue letter may file a civil action in superior court within one year of the issuance of the right-to-sue letter. A jury trial shall be available upon request of either party. The superior court judge shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages and, unless otherwise prohibited by law, punitive damages. Punitive damages may be ordered only if the court finds that the respondent engaged in a practice made unlawful by the ordinance with malice or with reckless indifference to the protected rights of the complainant. In cases involving unlawful employment practices, the court may order reinstatement or hiring, with back pay. The court may also allow reasonable costs and attorneys' fees, to any party , but not to the Commission.

If an ordinance is adopted, the city or county may enter into work-sharing agreements with the State and the federal government.

If a county adopts an ordinance, the ordinance shall apply to any part of the county not within the limits of a municipally incorporated city, town or village in the county. The governing board of a city, town or village may by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A municipality may also withdraw its permission after 30 days written notice to the county of its withdrawal of permission.

This bill applies to cities or counties with a population of 100,000 or more as determined by the most recent federal decennial census.

Based on the 2000 census, this bill would apply to the following counties: Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Iredell, Johnston, Mecklenburg, New Hanover, Onslow, Orange, Pitt, Randolph, Robeson, Rowan, Union, Wake, and Wayne.

This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE DRH4130-LK-164 (03/28)

HB 1217

FILED
1217 APR 11 01
D
HOUSE PRINCIPAL CLERK

Short Title:	Notify DWI Lienholders Immediately. (Public)
Sponsors:	Representative Hackney.
Referred to:	

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT LIENHOLDERS BE NOTIFIED IMMEDIATELY WHEN A MOTOR VEHICLE IS SUBJECT TO FORFEITURE FOR IMPAIRED DRIVING AFTER IMPAIRED DRIVING LICENSE REVOCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.3(b) reads as rewritten:

"(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall immediately notify the registered owner of the motor vehicle, if the owner was not driving the motor vehicle, and any lienholder holding a perfected security interest in the motor vehicle and the seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section."

SECTION 2. This act becomes effective January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1276

Short Title:	Close Incest Loophole to Protect Minors.	(Public)
Sponsors:	Representative Nesbitt.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CLOSE THE LEGAL LOOPHOLE THAT EXISTS UNDER THE STATE'S INCEST LAWS AND TO EQUALIZE PUNISHMENTS FOR CRIMES COMMITTED AGAINST CHILDREN WITHOUT REGARD TO FAMILIAL STATUS.

Whereas, despite the progress made in modernizing laws to protect children in North Carolina, a little-known loophole exists in the General Statutes of North Carolina that has very troubling consequences for some abused children; and

Whereas, this loophole allows far lesser penalties for perpetrators convicted of sexually assaulting their own children than for those who rape or molest other children; and

Whereas, this unintended disparity is the result of archaic incest laws that date to 1879, statutes that were originally intended to limit intermarriage among family members but now hamper modern efforts to fight sexual abuse of children.; and

Whereas, this double standard, that essentially rewards perpetrators for the most unthinkable betrayal of a child's trust, does not reflect the values and goals of the citizens of North Carolina; and

Whereas, criminals who sexually assault children should be prosecuted without regard to familial relationship; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-178 reads as rewritten:

"**§ 14-178. Incest between certain near relatives.**

(a) The parties shall be guilty of a felony in all cases of carnal intercourse between (i) grandparent and grandchild, (ii) parent and child or stepchild or legally adopted child, or (iii) brother and sister of the half or whole blood.

(b) Every such offense is punishable as a Class F felony.

(c) This section applies only if the parties are 18 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and

committed against a minor is unlawful and shall be prosecuted as provided under other provisions of applicable law."

SECTION 2. G.S. 14-179 reads as rewritten:

"**§ 14-179. Incest between uncle and niece and nephew and aunt.**

(a) In all cases of carnal intercourse between uncle and niece, and nephew and aunt, the parties shall be guilty of a Class 1 misdemeanor.

(b) This section applies only if the parties are 18 years old or older. This section does not apply if one of the parties is a minor. Conduct covered under this section, and committed against a minor is unlawful and shall be prosecuted as provided under other provisions of applicable law."

SECTION 3. 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 983 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT OWNERS OF LAND ASSOCIATED WITH WATERSHED IMPROVEMENT PROJECTS HAVE LIMITED LIABILITY WITH REGARD TO CERTAIN MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL 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) (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 1127*

Short Title:	DNA Sample/Felony Convictions & Insane Defense.	(Public)
Sponsors:	Representatives Blust; Brubaker, Carpenter, Culp, Daughtry, Davis, Eddins, Esposito, Hilton, Holmes, Howard, Johnson, Kiser, McMahan, Mitchell, Morris, Pope, Rayfield, Russell, Setzer, Shubert, Starnes, Teague, Thompson, Walker, Weatherly, West, and C. Wilson.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DNA SAMPLE SHALL BE TAKEN FROM ANY PERSON WHO IS CONVICTED OF A FELONY OR WHO IS FOUND NOT GUILTY OF A FELONY BY REASON OF INSANITY AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of ~~violent crimes against the person.~~ felonies. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. Blood sample required for DNA analysis upon conviction.**

~~(a)~~ On or after ~~1 July 1994,~~ December 1, 2001, a person who is convicted of ~~any of the crimes listed in subsection (b) of this section~~ a felony or who is found not guilty of a felony by reason of insanity shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after ~~1 July 1994, of any of these crimes,~~ December 1, 2001, of a felony or who is found not guilty of a felony by reason of insanity, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of ~~one or more of these crimes prior to 1 July~~

~~1994~~ a felony before December 1, 2001, or who was found not guilty of a felony by reason of insanity and committed to a Forensic Unit in accordance with G.S. 15A-1321 shall have a DNA sample drawn before parole or release from the penal system.

~~(b) Crimes covered by this Article include:~~

~~G.S. 14-17 - Murder in the first and second degree.~~
~~G.S. 14-27.2 - First degree rape.~~
~~G.S. 14-27.3 - Second degree rape.~~
~~G.S. 14-27.4 - First degree sexual offense.~~
~~G.S. 14-27.5 - Second degree sexual offense.~~
~~G.S. 14-28 - Malicious castration.~~
~~G.S. 14-29 - Castration or other maiming.~~
~~G.S. 14-30 - Malicious maiming.~~
~~G.S. 14-30.1 - Malicious throwing of corrosive acid or alkali.~~
~~G.S. 14-31 - Malicious assault in secret manner.~~
~~G.S. 14-32 - Felonious assault with deadly weapon with intent to kill.~~
~~G.S. 14-32.1 - Assaults on handicapped persons.~~
~~G.S. 14-34.1 - Discharging barreled weapon or firearm into occupied property.~~
~~G.S. 14-34.2 - Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.~~
~~G.S. 14-39(a)(3) - Kidnapping for the purpose of doing serious bodily harm to the person.~~
~~G.S. 14-49 - Malicious use of explosive or incendiary.~~
~~G.S. 14-58.2 - Burning of mobile home, manufactured type house, or recreational trailer home.~~
~~G.S. 14-202.1 - Taking indecent liberties with children.~~
~~G.S. 14-87 - Robbery with a dangerous weapon.~~
~~G.S. 14-277.3 - Stalking.~~
~~- Common law robbery.~~
~~- First degree arson.~~"

SECTION 3. G.S. 15A-266.10(a) reads as rewritten:

"(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. Any person found not guilty of a felony by reason of insanity whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the court has ordered the person discharged and released from the mental health facility in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided

in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement."

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

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This subsection shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board and any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

(1) Consolidate the provision of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;

(2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;

(3) Create a consolidated county human services agency having the authority to carry out the functions of the local health department, the county department of social services, and the area mental health, developmental disabilities, and substance abuse services authority; and

(4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

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(1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery from substance abuse, one family member of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

(2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.

(3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.

(4) One member of the board of county commissioners.

(5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi) failure to maintain qualifications for appointment required under this subsection. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

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A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(d) The consolidated human services board shall have authority to:

(1) Set fees for departmental services based upon recommendations of the human services director. Fees set under this subdivision are subject to the same restrictions on amount and scope that would apply if the fees were set by a county board of health, a county board of social services, or a mental health, developmental disabilities, and substance abuse area authority.

(2) Assure compliance with laws related to State and federal programs.

(3) Recommend creation of local human services programs.

(4) Adopt local health regulations and participate in enforcement appeals of local regulations.

(5) Perform regulatory health functions required by State law.

(6) Act as coordinator or agent of the State to the extent required by State or federal law.

(7) Plan and recommend a consolidated human services budget.

(8) Conduct audits and reviews of human services programs, including quality assurance activities, as required by State and federal law or as may otherwise be necessary periodically.

(9) Advise local officials through the county manager.

(10) Perform public relations and advocacy functions.

(11) Protect the public health to the extent required by law.

(12) Perform comprehensive mental health services planning.

(13) Develop dispute resolution procedures for human services contractors and clients and public advocates, subject to applicable State and federal dispute resolution procedures for human services programs, when applicable.

Except as otherwise provided, the consolidated human services board shall have the powers and duties conferred by law upon a board of health, a social services board, and an area mental health, developmental disabilities, and substance abuse services board.

Local employees who serve as staff of a consolidated county human services agency are subject to county personnel policies and ordinances only and are not subject to the provisions of the State Personnel Act.

(e) The human services director of a consolidated county human services agency shall be appointed and dismissed by the county manager with the advice and consent of the consolidated

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human services board. The human services director shall report directly to the county manager. The human services director shall:

(1) Appoint staff of the consolidated human services agency with the county manager's approval.

(2) Administer State human services programs.

(3) Administer human services programs of the local board of county commissioners.

(4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.

(5) Plan the budget of the consolidated human services agency.

(6) Advise the board of county commissioners through the county manager.

(7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.

(8) Act as an agent of and liaison to the State, to the extent required by law.

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, and a director of an area mental health, developmental disabilities, and substance abuse services authority.

(f) This section applies to counties with a population in excess of 425,000.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 837

Short Title:	Civil Penalty Auth./ Public Health Violations.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Public Health.	

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN BOARDS OF COUNTY COMMISSIONERS TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF PUBLIC HEALTH LAWS OR RULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-77(a) reads as rewritten:

"(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This subsection shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board and any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county. A board of county commissioners exercising the power and authority under this subsection may, notwithstanding G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil penalties. If a public health rule adopted by a board of county commissioners imposes a civil penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be applicable to that public health rule unless the rule states that a violation of the rule is a misdemeanor. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county."

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

HOUSE BILL 884:
Innocence Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Blue
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
Version:	H884-CSSA-6[v.1]		Committee Counsel

SUMMARY: ***House Bill 884 makes provisions to assist an innocent person charged with or wrongly convicted of a criminal offense in establishing the person's innocence and amends the law providing compensation to the person for a wrongful conviction.***

CURRENT LAW: North Carolina currently requires all persons convicted of certain offenses to submit a DNA sample. Those samples are tested and the results entered into a statewide database that is also shared with the federal DNA database.

BILL ANALYSIS: **Section 1** adds a new subsection to G.S. 15A-266.5 to allow criminal defendants to have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party.

Section 2 rewrites subsection (a) of G.S. 15A-266.10. The current subsection (a) allows expunction of DNA records when the person's conviction is reversed and the case dismissed. The current law requires the person to apply for expunction by the same procedure used to expunge records of criminal charges for which a person is found not guilty. The new subsection (a) makes expunction automatic upon the reversal of a conviction and the dismissal of the case, or the granting of a pardon.

Section 3 adds several new statutes to Article 13 of Chapter 15A, dealing with DNA testing. **G.S. 15A-267** requires the defendant to have pretrial access to any DNA samples and analyses performed in connection with the case in which the defendant is charged. Upon motion of the defendant, the court must order that DNA information obtained during the crime scene investigation be checked against both State and federal DNA records, and that the results of the check be disclosed to the defendant and the prosecutor upon showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

G.S. 15A-268 requires any governmental entity that collects evidence containing DNA in the course of a criminal investigation to preserve any biological material collected for as long as the defendant remains incarcerated in connection with that case. The evidence must be retained in a condition suitable for DNA testing. The governmental entity may dispose of the biological material prior to the defendant's release from incarceration only after notifying the defendant, the defendant's attorney, the public defender in the county of conviction, the district attorney in the county of conviction and the Attorney General, and only if the governmental entity does not receive, within 90 days of the notification, a request that the material not be destroyed because the requesting party will file, within 180 days, a motion for DNA testing.

G.S. 15A-269 provides for post-conviction DNA testing. It allows a defendant to make a motion for performance of DNA testing on any biological matter that: (1) is related to the investigation or prosecution that resulted in the judgment; and (2) was not previously tested, or was previously tested, but the requested DNA test would provide results that are reasonably more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting

prior test results. The court shall grant the motion for DNA testing upon its determination that if a DNA test had been conducted using current technology and the results admitted at trial there is a reasonable probability the verdict would have been more favorable to the defendant. This section requires DNA testing to be performed on any such evidence if the defendant is under a death sentence. The cost of any testing under this section shall be paid by the applicant or the State, as determined by the court.

G.S. 15A-270 provides post-test procedures. Upon receipt of the test results, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant. If the results of the DNA testing are unfavorable to the defendant, the court shall dismiss the motion and if the defendant is not indigent, may assess the cost of the testing to the defendant. If the results of the DNA testing are favorable to the defendant the court shall enter any order that serves the interest of justice, including an order: vacating and setting aside the judgment; discharging the defendant, if the defendant is in custody; presentencing the defendant; and granting a new trial.

Section 4 amends G.S. 148-82 to allow a claim against the State for pecuniary loss for erroneous conviction and imprisonment if: (1) the person has been granted a pardon of innocence by the Governor on the grounds that the crime with which the person was charged was either not committed at all or was not committed by that person; (2) the conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted; or (3) the person was found not guilty of the offense in a new trial or rehearing.

Section 5 amends G.S. 148-84 to raise the maximum amount the Industrial Commission may award a person eligible for compensation for erroneous conviction and imprisonment from $150,000 to $500,000.

Section 6 creates a new G.S. 114-10.2 requiring the Division of Criminal Statistics to annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government. This section sets forth 8 particular categories of information that this report shall contain. The section requires the Attorney General to ensure that the reports are distributed to the media and posted on the Department of Justice website.

This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date, and all actions and proceedings pending in the courts of this State, on or after that date.

HOUSE BILL 884:
Innocence Protection Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Blue
Date:	April 17, 2001	**Summary by:**	Susan L. Sitze
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CURRENT LAW: North Carolina currently requires all persons convicted of certain offenses to submit a DNA sample. Those samples are tested and the results entered into a statewide database that is also shared with the federal DNA database.

BILL ANALYSIS: **Section 1** adds a new subsection to G.S. 15A-266.5 to allow criminal defendants to have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party.

Section 2 rewrites subsection (a) of G.S. 15A-266.10. The current subsection (a) allows expunction of DNA records when the person's conviction is reversed and the case dismissed. The current law requires the person to apply for expunction by the same procedure used to expunge records of criminal charges for which a person is found not guilty. The new subsection (a) makes expunction automatic upon the reversal of a conviction and the dismissal of the case, or the granting of a pardon.

Section 3 adds several new statutes to Article 13 of Chapter 15A, dealing with DNA testing. **G.S. 15A-267** requires the defendant to have pretrial access to any DNA samples and analyses performed in connection with the case in which the defendant is charged. Upon motion of the defendant, the court must order that DNA information obtained during the crime scene investigation be checked against both State and federal DNA records, and that the results of the check be disclosed to the defendant and the prosecutor upon showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

G.S. 15A-268 requires any governmental entity that collects evidence containing DNA in the course of a criminal investigation to preserve any biological material collected for as long as the defendant remains incarcerated in connection with that case. The evidence must be retained in a condition suitable for DNA testing. The governmental entity may dispose of the biological material prior to the defendant's release from incarceration only after notifying the defendant, the defendant's attorney, the public defender in the county of conviction, the district attorney in the county of conviction and the Attorney General, and only if the governmental entity does not receive, within 90 days of the notification, a request that the material not be destroyed because the requesting party will file, within 180 days, a motion for DNA testing.

G.S. 15A-269 provides for post-conviction DNA testing. It allows a defendant to make a motion for performance of DNA testing on any biological matter that: (1) is related to the investigation or prosecution that resulted in the judgment; and (2) was not previously tested, or was previously tested, but the requested DNA test would provide results that are reasonably more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting

prior test results. The court shall grant the motion for DNA testing upon its determination that if a DNA test had been conducted using current technology and the results admitted at trial there is a reasonable probability the verdict would have been more favorable to the defendant. This section requires DNA testing to be performed on any such evidence if the defendant is under a death sentence. The cost of any testing under this section shall be paid by the applicant or the State, as determined by the court.

G.S. 15A-270 provides post-test procedures. Upon receipt of the test results, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant. If the results of the DNA testing are unfavorable to the defendant, the court shall dismiss the motion and if the defendant is not indigent, may assess the cost of the testing to the defendant. If the results of the DNA testing are favorable to the defendant the court shall enter any order that serves the interest of justice, including an order: vacating and setting aside the judgment; discharging the defendant, if the defendant is in custody; presentencing the defendant; and granting a new trial.

Section 4 amends G.S. 148-82 to allow a claim against the State for pecuniary loss for erroneous conviction and imprisonment if: (1) the person has been granted a pardon of innocence by the Governor on the grounds that the crime with which the person was charged was either not committed at all or was not committed by that person; (2) the conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted; or (3) the person was found not guilty of the offense in a new trial or rehearing.

Section 5 amends G.S. 148-84 to raise the maximum amount the Industrial Commission may award a person eligible for compensation for erroneous conviction and imprisonment from $150,000 to $500,000.

Section 6 creates a new G.S. 114-10.2 requiring the Division of Criminal Statistics to annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government. This section sets forth 8 particular categories of information that this report shall contain. The section requires the Attorney General to ensure that the reports are distributed to the media and posted on the Department of Justice website.

This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date, and all actions and proceedings pending in the courts of this State, on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1127*

Short Title:	DNA Sample/Felony Convictions & Insane Defense.	(Public)
Sponsors:	Representatives Blust; Brubaker, Carpenter, Culp, Daughtry, Davis, Eddins, Esposito, Hilton, Holmes, Howard, Johnson, Kiser, McMahan, Mitchell, Morris, Pope, Rayfield, Russell, Setzer, Shubert, Starnes, Teague, Thompson, Walker, Weatherly, West, and C. Wilson.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DNA SAMPLE SHALL BE TAKEN FROM ANY PERSON WHO IS CONVICTED OF A FELONY OR WHO IS FOUND NOT GUILTY OF A FELONY BY REASON OF INSANITY AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of ~~violent crimes against the person.~~ felonies. Identification, detection, and exclusion is facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. Blood sample required for DNA analysis upon conviction.**

~~(a)~~ On or after ~~1 July 1994,~~ December 1, 2001, a person who is convicted of ~~any of the crimes listed in subsection (b) of this section~~ a felony or who is found not guilty of a felony by reason of insanity shall have a DNA sample drawn upon intake to a jail or prison. In addition, every person convicted on or after ~~1 July 1994, of any of these crimes,~~ December 1, 2001, of a felony or who is found not guilty of a felony by reason of insanity, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence. A person who has been convicted and incarcerated as a result of a conviction of ~~one or more of these crimes prior to 1 July~~

~~1994~~ a felony before December 1, 2001, or who was found not guilty of a felony by reason of insanity and committed to a Forensic Unit in accordance with G.S. 15A-1321 shall have a DNA sample drawn before parole or release from the penal system.

~~(b) Crimes covered by this Article include:~~

~~G.S. 14-17 - Murder in the first and second degree.~~
~~G.S. 14-27.2 - First degree rape.~~
~~G.S. 14-27.3 - Second degree rape.~~
~~G.S. 14-27.4 - First degree sexual offense.~~
~~G.S. 14-27.5 - Second degree sexual offense.~~
~~G.S. 14-28 - Malicious castration.~~
~~G.S. 14-29 - Castration or other maiming.~~
~~G.S. 14-30 - Malicious maiming.~~
~~G.S. 14-30.1 - Malicious throwing of corrosive acid or alkali.~~
~~G.S. 14-31 - Malicious assault in secret manner.~~
~~G.S. 14-32 - Felonious assault with deadly weapon with intent to kill.~~
~~G.S. 14-32.1 - Assaults on handicapped persons.~~
~~G.S. 14-34.1 - Discharging barreled weapon or firearm into occupied property.~~
~~G.S. 14-34.2 - Assault with firearm or other deadly weapon upon law enforcement officer, fireman, or EMS personnel.~~
~~G.S. 14-39(a)(3) - Kidnapping for the purpose of doing serious bodily harm to the person.~~
~~G.S. 14-49 - Malicious use of explosive or incendiary.~~
~~G.S. 14-58.2 - Burning of mobile home, manufactured type house, or recreational trailer home.~~
~~G.S. 14-202.1 - Taking indecent liberties with children.~~
~~G.S. 14-87 - Robbery with a dangerous weapon.~~
~~G.S. 14-277.3 - Stalking.~~
~~- Common law robbery.~~
~~- First degree arson.~~"

SECTION 3. G.S. 15A-266.10(a) reads as rewritten:

"(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. Any person found not guilty of a felony by reason of insanity whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the court has ordered the person discharged and released from the mental health facility in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided

in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 941*

Short Title:	County Antidiscrimination Ordinances.	(Public)
Sponsors:	Representatives Insko and Hackney.	
Referred to:	Judiciary I.	

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited include, but are not limited to, race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during

an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party where the Commission has failed to make a determination on the issue of reasonable cause in a timely manner; determines that reasonable cause does not exist; where conciliation efforts have failed; and where the Commission has made a determination that there is probable cause to believe that discrimination took place.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or

parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city or county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to cities and counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

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

House Judiciary I Committee

April 19, 2001
10:00 AM

Minutes

The House Judiciary I Committee met on Thursday, April 19, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Boyd-McIntyre, Clary, Gray, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. Representatives Cunningham and Dedmon, Ex-officio members of the committee were also present. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Jennifer Weiss was recognized for the continuation of the discussion of House Bill 320, AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS, (Attachment III). The bill was explained during the April 5, 2001 meeting of the committee. Representative Weiss offered a proposed committee substitute, (Attachment IV). Representative Insko moved that it be adopted for the purpose of discussion. The motion carried. Representative Weiss stated that the committee substitute was an attempt to work out a compromise and that the language under section (a2) beginning on line 27 of page one was changed following discussion with committee members who were concerned that the safe harbor provisions were not encompassing enough and did not offer enough for personal security. She said that the new language would allow one to have a firearm, keep it unloaded and out of sight, and if the ammunition was stored in a separate location, the owner would meet the safe storage definition.

Representative Weiss stated that the State Board of Education had endorsed all the recommendations of the Child Fatality Task Force and the safe storage of firearms was one of those recommendations. She said that the purpose of the bill is to require that people store firearms safely to protect minors and that it does not take away the right of self defense and does not take away the right of gun ownership. She said that the National Rifle Association had been contacted in an effort to develop compromise language, but that they did not respond.

Representative Sutton offered an amendment, (Attachment V), and moved its adoption. The effect of the amendment would be to delete lines 5 and 6 on page 2 of the bill. Representative Sutton said that the provision that would be deleted by his amendment does nothing to protect anyone, noting that the language, "Out of sight, with the ammunition stored in a separate location," does not mean that a child could not get to it.

Representative Weiss responded that this provision had been added at the request of a member of the committee, but she agreed with Representative Sutton that it should be deleted.

Representative Nesbitt stated that he had requested the language to address inquiries he had received regarding self-defense.

Representative Sutton stated that if the language could be rewritten to say that the gun and ammunition was inaccessible to a child, he could support it.

Representative Sutton withdrew his amendment.

Representative Nesbitt offered an amendment, (Attachment VI), that would require that the ammunition be stored in a location not accessible to a minor.

Representative Blue said that the concern appears to be having a gun stored in one place and the ammunition stored in another and that this could be accomplished by saying that the firearm should be kept unloaded and out of sight with ammunition stored in a separate secured location rather than using the language, "Not accessible to a minor."

Representative Sutton said that this language was acceptable to him, and that his concern is to not allow small children to have access to the weapon and the ammunition.

Representative Nesbitt withdrew his amendment.

Representative Blue offered an amendment, (Attachment VII), that would require that the ammunition be stored in a separate secure location.

Representative Weiss stated that she felt that the amendment would offer a good compromise.

Following discussion, the amendment was adopted.

Representative Alexander moved that the amendment be rolled into a new committee substitute, that the committee substitute be given a favorable report, and that the original bill be given an unfavorable report.

Representative Thompson requested that a fiscal note be provided to the members of the committee. Chairman Hackney stated that as bills are leaving the committee, fiscal notes are routinely being requested. Ms. Sitze, Committee Counsel, stated that a fiscal note had been prepared for the original version of the bill. Chairman Hackney said that a new fiscal note would be requested based on the committee substitute.

Representative Arnold spoke in opposition to the bill.

Representative Sutton and Nesbitt spoke in support of the bill.

The motion was before the committee for a favorable report for a committee substitute incorporating the Blue amendment. Upon a voice vote, the motion carried, (Attachment VIII). A copy of the new committee substitute is attached, (Attachment IX).

Chairman Hackney reminded the committee that they would meet again at 1:00 p.m.

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 19, 2001

AGENDA

HOUSE BILL 320 – SAFE STORAGE OF FIREARMS
REPRESENTATIVE JENNIFER WEISS

HOUSE BILL 383– LOCAL GOVERNMENT TORT LIABILITY
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 514 – RECORD CLOSED SESSIONS
REPRESENTATIVE ROBERT GRADY

HOUSE BILL 793 – INDECENT BEHAVIOR BETWEEN MINORS
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 983 – LMT LIABILITY/LANDOWNER OF WATERSHED PROPERTIES
REPRESENTATIVE ARLIE CULP

HOUSE BILL 1224 – CONSTRUCTION CONTRACTS/RETAINAGE REFORM
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1225 – OPEN MEETINGS PENDING LITIGATION
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1293 – DISTRICT COURT DISTRICT 18 JUDGES' RESIDECY
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1321 – IMMUNITY FOR CITY/PUBLIC SAFETY OFFICERS
REPRESENTATIVE MARTIN NESBITT

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 19, 2001 10:00 am meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Boney Jr	Jhe Alamance News / NC Press Assn.
GARY GOVERT	NC PRESS ASSN
Paula A. Wolf	Covenant w/ NC's Children
Ruth E. Cook	CAH
Robert K Anderson	NCGV
Jay Mayo	Womble Carlyle
Dave McNeill	MMM / NCGV Winston Salem
Allyson McCann	NCGV-EF
Sabrina Buckner	MMM-Raleigh / NCGV
Lisa Price	N. Carolinians Against Gun Violence
Anne Sawyers	Million Moms of N.C.
Lynn Bonner	N&O
George Reed	NC Council of Churches
J. Michael Staggs	Nat'l Assoc. of Social Workers - NC
Jennifer Sullivan	"
Thomas S Rhyne III	GRNC - PVF Director
James J Mello	GRNC
Roberta Spencer	N.C. Community Action Assn.
Ted Vaden	N.C. Press Assn / Chapel Hill News
Tori Taylor	NC Press Association
Ron Aycock	County Com. Assoc.
Bill Wilson	NCATL
Chris Fitzsimon	Common Sense Foundation
Soreen Schmidt	NC Justice Center
Melissa Lovell	DOJ
Alicia Gruenebaum	YAID

VISITOR REGISTRATION SHEET

Jud. I — Name of Committee

4/19/01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Barbee	CAPA
Tom McLeod	CCPS
Stephanie Hayes	ElectriCities
R. Paul Williams	NCCBA
John Bussian	NC Press Assn
Curtis Rodgers	Parker Poe Adams & Bernstein
Mary Bushnell	NC CCRER Network -
Tom Vitaglione	NCCAT
AL DEITCH	DOA/PATD
Joe McClees & Hemi McClees	McClees Consulting, Inc.
HUGH ADAMS	GRNC
MARCIA OWEN	MILLION MOM MARCH-NC
Rachel Smith	Million Mom March - NC
Tom Coley	CWA
Richard L. O'Brien	PEEPNC
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN, LLP
[illegible]	PCANC
Thomas V. Bennett	
Wayne Ruffin	The News & Observer
AL ADAMS	NCGV - PARKER POE ADAMS & BERNSTEIN LLP
Drew Nelson	Rep Hackney
Barry Smith	Freedom Newspapers

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 320

Short Title:	Safe Storage of Firearms.	(Public)
Sponsors:	Representatives Weiss, Easterling, Hunter; Adams, Alexander, Coates, Hensley, Insko, Jeffus, Luebke, McAllister, and Michaux.	
Referred to:	Judiciary I.	

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner ~~that~~ in which the person knew or should have known that ~~an unsupervised~~ a minor would be able to gain access to the ~~firearm,~~ firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b); or

(2) Exhibits it in a public ~~place in a careless, angry, or threatening manner;~~place.

~~(3) Causes personal injury or death with it not in self-defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Uses the firearm to cause personal injury or death, not in self-defense; or

(2) Uses the firearm in the commission of a crime.

(a2) Subsections (a) and (a1) of this section shall not apply if:

(1) The firearm is kept unloaded in a locked box or container, with the ammunition stored separately; or

(2) The firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

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 320
PROPOSED COMMITTEE SUBSTITUTE H320-CSSA-13 [v.1]

4/18/2001 2:56:07 PM

Short Title: Safe Storage of Firearms. (Public)

Sponsors:

Referred to:

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner ~~that~~ in which the person knew or should have known that ~~an unsupervised~~ a minor would be able to gain access to the ~~firearm,~~ firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b); or

(2) Exhibits it in a public ~~place in a careless, angry, or threatening manner;~~place.

~~(3) Causes personal injury or death with it not in self-defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Uses the firearm to cause personal injury or death, not in self-defense; or

(2) Uses the firearm in the commission of a crime.

(a2) Subsections (a) and (a1) of this section shall not apply if:

(1) The firearm is kept in a locked box or locked container;

(2) The firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user; or

(3) The firearm is kept unloaded and out of sight, with the ammunition stored in a separate location.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H320-CSSA-13[v.1] DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Sutton

1 moves to amend the bill on page 1, line 28

2 ( ) WHICH CHANGES THE TITLE

3 by ~~deleting "container"~~ inserting "or" after "container;"

4

5 and on page 2, lines 4-6

6 by rewriting those lines to read:

7 "other lawfully authorized user."

8

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Nesbitt

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VI

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ 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 6

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"stored in a separate location not accessible to a ~~child~~ minor."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H320-CSSA-13[v.1] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Blue
Sen.)

1 moves to amend the bill on page 2, line 6

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "Stored in a separate secure location".

5

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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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 320 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

☐ 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 320
PROPOSED COMMITTEE SUBSTITUTE H320-PCS7198-SA-13

Short Title: Safe Storage of Firearms. (Public)

Sponsors:

Referred to:

February 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STORAGE OF FIREARMS TO PROTECT MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner ~~that~~ in which the person knew or should have known that ~~an unsupervised~~ a minor would be able to gain access to the ~~firearm,~~ firearm is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b); or

(2) Exhibits it in a public ~~place in a careless, angry, or threatening manner;~~ place.

~~(3) Causes personal injury or death with it not in self-defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor, and the minor:

(1) Uses the firearm to cause personal injury or death, not in self-defense; or

(2) Uses the firearm in the commission of a crime.

(a2) Subsections (a) and (a1) of this section shall not apply if:

(1) The firearm is kept in a locked box or locked container;

(2) The firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user; or

(3) The firearm is kept unloaded and out of sight, with the ammunition stored in a separate secure location.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) 'Minor' as used in this section means a person under 18 years of age who is not emancipated."

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

House Judiciary I Committee

April 19, 2001
1:00 P.M.

Minutes

The House Judiciary I Committee met on Thursday, April 19, 2001 at 1:00 a.m. in Room 1425 of the Legislative Building to complete the agenda from the 10:00 meeting. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Blue, Blust, Gray, Insko, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Grady was recognized for a continuation of the discussion of House Bill 514, AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS, (Attachment III). The bill was explained and discussed during the March 29, 2001 meeting of the committee. Representative Grady said that the bill would remove the option of having only written notes for the purpose of recording closed sessions. He said that closed sessions would have to be recorded either by video or tape recorder and would give the public the opportunity, at the proper time, to hear what happened. The bill analysis that was prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV).

Representative Redwine asked how closed meeting discussions regarding personnel issues are handled under current law.

Mr. Ron Aycock, North Carolina Association of County Commissioners, said that such information is confidential until such time that the release would not frustrate the purpose of having it confidential. He said that if the process is ongoing, the information would not be released.

Representative Redwine asked if the bill would change that process.

Mr. Tom Boney, representing Alamance News and the North Carolina Press Association, said that currently personnel discussions are properly allowed to be confidential in closed session and whatever record is kept, whether written or recorded, typically would not be released. He said that the bill would not change this.

Representative Thompson asked how the provisions of the bill would be enforced.

Chairman Hackney replied that civil action would be taken.

Representative Sutton stated that he thought the bill would stifle debate.

Speaking in opposition to the bill were:

- Mr. Andrew Romanet, North Carolina League of Municipalities
- Hugh Tilson, North Carolina Hospital Association
- Mr. Aycock, North Carolina Association ofCounty Commissioners
- Ms. Leanne Winner, North Carolina School Boards Association

Mr. Boney was recognized and spoke in support of the bill.

Representative Insko moved to amend the bill on page 1 line 15, to insert after the word "session" the phrase, "except where the session involves school board discussion of a public school student of students" (Attachment V).

Representative Grady expressed support for the amendment.

Ms. Winner said that Representative Insko's amendment would address the special concern that school boards have regarding federal laws that govern the release of student records, but that they still have concerns with the bill.

Chairman Hackney expressed concern regarding the precision of the drafting of the amendment. He asked if the committee would like to work on the wording of the amendment before a vote was taken.

Following discussion, the members decided to act on the motion and the amendment was adopted.

Representative Redwine moved to amend the bill on page 2, line 7 to change the effective date of the bill, (Attachment VI). The motion carried.

Representative Blust stated that he was sympathetic to arguments made by Mr. Tilson regarding patients' healthcare information, but that he could wait to offer an amendment on the floor.

Chairman Hackney reminded him of the time constraints with regard to the crossover deadline, in the event that the bill should be sent back to committee.

Representative Gray moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VII). A copy of the committee substitute is attached, (Attachment VIII).

The next bill to be discussed was House Bill 983, AN ACT TO PROVIDE THAT OWNERS OF LAND ASSOCIATED WITH WATERSHED IMPROVEMENT PROJECTS HAVE LIMITED LIABILITY WITH REGARD TO CERTAIN MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL PURPOSES, (Attachment IX). Representative Culp was recognized to explain the bill. He said that the bill was introduced on behalf of the Soil and Water Conservation Association of North

Carolina and limits the liability of a landowner whose land is associated with watershed projects to no greater than a trespasser.

Mr. Frank Folger, Committee Counsel, commented briefly on the bill. A bill analysis prepared by Mr. Folger is attached, (Attachment X).

Representative Gray moved that the bill be given a favorable report. The motion carried, (Attachment XI).

Chairman Hackney announced that House Bill 884, Innocence Protection Act, had been reported out on April 18, 2001 with a favorable report for the committee substitute, but without giving the original bill an unfavorable report. He said that the Principal Clerk reports that because everything is now on computer, two numbers cannot be entered for the same bill. Therefore, a motion for a favorable report for a committee substitute with the underlying bill remaining undecided is no longer an option for consideration. He asked Representative Blue if he would like to make a motion for an unfavorable report for the original bill.

Representative Blue stated that the interpretation of the rule is that once an action has been taken on a bill and that action is unfavorable, any subject matter arising thereafter is ruled out of order unless a two-thirds vote is received to suspend the rules.

He then moved that the committee reconsider the vote by which a favorable report was given for the committee substitute for House Bill 884. The motion carried and the original bill was again before the committee, (Attachment XII).

Representative Blue then offered an amendment to remove sections 4,5 and 6 of the original bill, (Attachment XIII). The motion carried.

Representative Blue moved that the committee adopt a committee substitute for the original bill, incorporating the amendment, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment XIV). A copy of the committee substitute is attached, (Attachment XV).

The meeting was adjourned at 1:50 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

Carolina and limits the liability of a landowner whose land is associated with watershed projects to no greater than a trespasser.

Mr. Frank Folger, Committee Counsel, commented briefly on the bill. A bill analysis prepared by Mr. Folger is attached, (Attachment X).

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Representative Blue stated that the interpretation of the rule is that once an action has been taken on a bill and that action is unfavorable, any subject matter arising thereafter is ruled out of order unless a two-thirds vote is received to suspend the rules. He then moved that the committee reconsider the vote by which a favorable report was given for the committee substitute for House Bill 884. The motion carried and the original bill was again before the committee, (Attachment XII).

Representative Blue then offered an amendment to remove sections 4,5 and 6 of the original bill, (Attachment XIII). The motion carried.

Representative Blue moved that the committee adopt acommittee substitute for the original bill, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment XIV). A copy of the committee substitute is attached, (Attachment XV).

The meeting was adjourned at 1:50 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 19, 2001

AGENDA

HOUSE BILL 320 – SAFE STORAGE OF FIREARMS
REPRESENTATIVE JENNIFER WEISS

HOUSE BILL 383– LOCAL GOVERNMENT TORT LIABILITY
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 514 – RECORD CLOSED SESSIONS
REPRESENTATIVE ROBERT GRADY

HOUSE BILL 793 – INDECENT BEHAVIOR BETWEEN MINORS
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 983 – LMT LIABILITY/LANDOWNER OF WATERSHED PROPERTIES
REPRESENTATIVE ARLIE CULP

HOUSE BILL 1224 – CONSTRUCTION CONTRACTS/RETAINAGE REFORM
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1225 – OPEN MEETINGS PENDING LITIGATION
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1293 – DISTRICT COURT DISTRICT 18 JUDGES' RESIDECY
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1321 – IMMUNITY FOR CITY/PUBLIC SAFETY OFFICERS
REPRESENTATIVE MARTIN NESBITT

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 19, 2001 1:00 pm meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ERIC DYER	News & Record
Barry Smith	Fuston Newspapers
Richard O'Brien	PFFPNC
[illegible]	[illegible]
Andy Romanet	NC Lm.
HUGH TILSON	NCHA
Leanne Winner	NCSBA
Margaret Westbrook	Kennedy Covington
Paul Williams	NCHBA
Alice Garland	Electricities
Stella Boswell	NCATL
Bill Wilson	NCATL
Tom Boney Jr	Clearance News / NC Press Assn
GARY GOVERT	NC PRESS ASSN
Teri Saylor	NC Press Assoc.
Amy Gardner	News + Observer
Catherine Davis	Electricities
Ron Aycock	Co. Com Assoc
Myth Osborne	AOC
[illegible]	NCASA
Jay [illegible]	DOT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 514

Short Title:	Record Closed Sessions.	(Public)
Sponsors:	Representatives Grady; Hensley, Starnes, and Russell.	
Referred to:	Judiciary I.	

March 7, 2001

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. ~~Such~~ In an open meeting, those minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall ~~keep a general account~~ make and keep either a sound recording or a combination video and sound recording of the closed ~~session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings~~ session. The public body shall designate a person or persons to be responsible for making and maintaining the recording of the closed session and for certifying that the entire closed session, including all discussion taking place therein, was duly recorded as required by this subsection. ~~Such minutes and accounts~~ All such minutes and recordings shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes ~~or an account~~ and recordings of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

SECTION 2. G.S. 143-318.11(c) reads as rewritten:

"(c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or

citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session. The motion to hold a closed session shall designate a person or persons to make and maintain the minutes and the recording of the closed session."

SECTION 3. This act becomes effective October 1, 2002.

HOUSE BILL 514:
Record Closed Sessions

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Grady
Date:	March 29, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 514 requires that all closed meetings of public bodies be recorded and those recordings released after the justification for withholding details has passed.***

CURRENT LAW: The open meetings law applies to all official meetings of public bodies. A public body is "any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function". The term "public body" also includes the governing boards of "public hospitals".

Current law only requires public bodies to keep a "general account" of a closed session so that "a person not in attendance would have a reasonable understanding of what transpired". The current law does allow for the general account to be released for public inspection when public inspection would no longer frustrate the purpose of a closed session.

BILL ANALYSIS: House Bill 514 amends the open meetings laws to require a public body that meets in closed session to make a sound recording or combination video and sound recording of the closed session. The bill also requires the motion for closed session to designate the person to make and maintain the minutes and the recording of the closed session and for certifying that the entire closed session, including all discussion taking place therein, was duly recorded as required by the law.

These recordings would become part of the public record, but could be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

The act would be effective October 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 514 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Inskeep
Sen.)

moves to amend the bill on page 1, line 15

( ) WHICH CHANGES THE TITLE

by adding after the word "session" the phrase

~~except where the discussion~~ "except where the session involves a discussion of a student by the schoolboard of public schools"

~~students~~ "

SIGNED Verla Inskeep

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 514 DATE 3-29-01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 7
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "2002." and inserting "2001."
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Roll into PCS for next time

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 514 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS.

☐ 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 514
PROPOSED COMMITTEE SUBSTITUTE H514-PCS3411-SO-24

Short Title: Record Closed Sessions. (Public)

Sponsors:

Referred to:

March 7, 2001

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE PUBLIC'S RIGHT TO KNOW DETAILS OF CLOSED MEETINGS AFTER THE JUSTIFICATION FOR WITHHOLDING DETAILS HAS PASSED BY ADDING TO THE OPEN MEETINGS LAW A REQUIREMENT TO MAKE RECORDINGS OF ALL CLOSED MEETINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.10(e) reads as rewritten:

"(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. ~~Such~~ In an open meeting, those minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall ~~keep a general account~~ make and keep either a sound recording or a combination video and sound recording of the closed ~~session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings~~ session, except where the session involves school board discussion of a public school student or students. The public body shall designate a person or persons to be responsible for making and maintaining the recording of the closed session and for certifying that the entire closed session, including all discussion taking place therein, was duly recorded as required by this subsection. ~~Such minutes and accounts~~ All such minutes and recordings shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes ~~or an account~~ and recordings of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session."

SECTION 2. G.S. 143-318.11(c) reads as rewritten:

"(c) Calling a Closed Session. – A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or

citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session. The motion to hold a closed session shall designate a person or persons to make and maintain the minutes and the recording of the closed session."

SECTION 3. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 983

Short Title:	Lmt Liability/Landowner of Watershed Properties.	(Public)
Sponsors:	Representatives Culp; Brubaker, Hill, Holmes, Mitchell, Teague, Tolson, Warwick, and G. Wilson.	
Referred to:	Judiciary I.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT OWNERS OF LAND ASSOCIATED WITH WATERSHED IMPROVEMENT PROJECTS HAVE LIMITED LIABILITY WITH REGARD TO CERTAIN MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 139 of the General Statutes is amended by adding a new section to read:

"**§ 139-41.3. Liability of owners of land associated with watershed improvement projects.**

(a) Purpose. – The purpose of this section is to encourage owners of land to make land and water areas available to the public at no cost for educational and recreational purposes by limiting the liability of the owner to persons entering the land for those purposes. The further purpose of this section is to establish a statutory rule of landowner liability law to govern the liability of a landowner whose land is associated with a watershed improvement project as defined by this Chapter to persons entering the land for educational and recreational purposes without charge. This statutory rule modifies the common law of North Carolina concerning landowner liability.

(b) Definitions. – The following definitions apply in this section, unless otherwise specified:

(1) Charge. – A price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for an invitation or permission to enter upon land, except as otherwise excluded in this section.

(2) Educational purpose. – Any activity undertaken as part of a formal or informal educational program, and viewing historical, natural, archaeological, or scientific sites.

(3) Land. – Real property, land, and water. The term does not include a dwelling or the property immediately adjacent to and surrounding the dwelling that is generally used for activities associated with occupancy of the dwelling as a living space.

(4) Land associated with watershed improvement projects. – The entire parcel or set of parcels on which any part of a watershed improvement project is located, including any fee easement, leasehold interest or legal possession.

(5) Legal entity. – The term includes (in addition to a private entity) a county, city, special district, public authority, or other unit or agency of government.

(6) Owner. – Any individual or legal entity that has any fee, easement, leasehold interest, or legal possession, and any employee or agent of the individual or legal entity.

(7) Recreational purpose. – Any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion, or pleasure.

(c) Exclusion. – For purposes of this Chapter, the term 'charge' does not include any of the following:

(1) Any contribution in-kind, services, or cash contributed by a person, legal entity, nonprofit organization, or governmental entity other than the owner, whether or not sanctioned or solicited by the owner, the purpose of which is to: (i) remedy damage to land caused by educational or recreational use; or (ii) provide warning of hazards on, or remove hazards from, land used for educational or recreational purposes.

(2) Unless otherwise agreed in writing or otherwise provided by the State or federal tax codes, any property tax abatement or relief received by the owner from the State or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.

(3) Any volunteer service involving trash pickup, stream cleanup, or stream bank restoration.

(d) Limitation of Liability. – Except as specifically recognized by or provided for in this section, an owner of land associated with a watershed improvement project, as defined by this Chapter, who either directly or indirectly invites or permits without charge any person to use the land for educational or recreational purposes owes the person the same duty of care that he or she owes a trespasser, except that nothing in this Chapter shall be construed to limit or nullify the doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge.

This section does not apply to an owner who invites or permits any person to use land for a purpose for which the land is regularly used and for which a price or fee is usually charged even if it is not charged in that instance, or to an owner whose purpose

in extending an invitation or granting permission is to promote a commercial enterprise."

SECTION 2. This act becomes effective October 1, 2001, and applies to all causes of action arising on or after that date. All insurance policies providing liability coverage for land, as defined in G.S. 139-41.3(b)(3) covered by Section 1 of this act shall be rerated on the anniversary dates of the policies next following the effective date of Section 1 of this act, to reflect the added limitation of liability contained in G.S. 139-41.3.

HOUSE BILL 983: Lmt Liability/Landowner of Watershed Properties

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Culp
Date:	April 17, 2001	**Summary by:**	Frank W. Folger
Version:	First Edition		Committee Counsel

SUMMARY: ***This bill would statutorily establish that the general duty owed by landowners of land associated with a watershed improvement project to persons entering the land for educational and recreational purposes without charge is to refrain from wanton or willful infliction of injury but would revive the doctrine of attractive nuisance.***

CURRENT LAW: Premises liability law is based in common law rather than statutory law. To lawful visitors, landowners owe a duty to exercise reasonable care in the maintenance of their premises. To trespassers, landowners owe only a duty to refrain from wanton or willful infliction of injury. A willful injury requires actual knowledge of the danger and a design, purpose, or intent to do wrong and inflict injury. A wanton injury requires performance intentionally with a reckless indifference to the injuries likely to result. The distinction between invitees and licensees has been judicially abolished.

Landowners of watershed improvement projects are subject to the common law rules on premises liability previously described. The nature of these landowners' liability depends on whether the person entering the land is a lawful visitor or not.

The doctrine of attractive nuisance applies to children entering property of a landowner

BILL ANALYSIS: Section 1 would create a new statutory section, N.C.G.S. §139-41.3,with the express intent to encourage landowners to make land and water areas available to the public at no cost for educational and recreational purposes by creating a diminished premises liability standard statutorily. The statute would provide that a landowner of land associated with a "watershed improvement project" (defined in N.C.G.S. §139-3(17)) would only owe a duty to refrain from wanton and willful infliction of injury to anyone entering the property by direct or indirect invitation or permission without charge for educational or recreational purposes. This would result in the landowners' liability being the same for these lawful visitors as for trespassers. These landowners would still owe a duty of reasonable care to lawful visitors not within this "exception." This section also maintains the doctrine of attractive nuisance and requires the owner to inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge.

This section, by definition, excludes from the definition of "charge": contributions to remedy damage caused by educational or recreational use or to provide warnings for hazards or remove hazards; State or local tax relief or abatement in exchange for agreement to open the land for educational or recreational purposes; and any volunteer service involving trash pickup, stream cleanup, or stream bank restoration.

This section expressly does not apply to landowners who customarily charge but do not in a certain instance and to landowners who permit entry to promote a commercial enterprise.

BACKGROUND: In Nelson v. Freeland, 349 N.C. 615 (1998), the North Carolina Supreme Court abolished the traditional distinction between invitees and licensees because of the lack of clarity in the

law. In doing so, it followed the trend of nearly half of the states in judicially abandoning or modifying the common law trichotomy in favor of the modern "reasonable person" approach.

ISSUES OF CONCERN: The language of the bill reflects pre-Nelson distinctions that have been judicially abolished at least in part because they were confusing and often resulted in judicial machinations and inconsistency. The bill expressly references "attractive nuisance" which is seemingly a dead doctrine, based on a fair reading of Nelson and the absence of reference to the doctrine following that case. The concern would be whether the legislature wishes to recreate a premises liability arena that potentially could result again in "a labyrinth of jurisprudence", in the words of the North Carolina Supreme Court.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 983 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT OWNERS OF LAND ASSOCIATED WITH WATERSHED IMPROVEMENT PROJECTS HAVE LIMITED LIABILITY WITH REGARD TO CERTAIN MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL 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) (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 884*

Short Title:	Innocence Protection Act.	(Public)
Sponsors:	Representatives Hackney, Blue, Nesbitt, Sutton (Primary Sponsors); and Alexander.	
Referred to:	Judiciary I.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State

DNA Databank, the DNA sample shall be expunged. The DNA record, and any samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual, or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180

days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence, and if the results had been admitted in the trail resulting in the judgment there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; or

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the

DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) If the results of DNA testing conducted under this section are unfavorable to the applicant, the court:

(1) Shall dismiss the application; and

(2) In the case of an applicant who is not indigent, may assess the applicant for the cost of the testing.

(b) If the results of DNA testing conducted under this section are favorable to the applicant, the court:

(1) Shall order a hearing, notwithstanding any provision of law that would bar the hearing; and

(2) Shall enter any order that serves the interests of justice, including an order:

a. Vacating and setting aside the judgment;

b. Discharging the applicant, if the applicant is in custody;

c. Presentencing the applicant; and

d. Granting a new trial."

SECTION 4. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon any of the grounds listed below, ~~that the crime with which the person was charged either was not committed at all or was not committed by that person,~~ may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the ~~pardon.~~ pardon:

(1) The crime with which the person was charged either was not committed at all or was not committed by that person.

(2) The conviction of the person was reversed or set aside on the ground that the person was not guilty of the offense for which the person was convicted.

(3) The person was found not guilty of the offense in a new trial or rehearing."

SECTION 5. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, ~~or~~ was not committed by the claimant, the claimant's conviction was reversed, or the claimant was found not guilty of the offense at a new

trial or rehearing, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of ~~one hundred fifty thousand dollars ($150,000).~~ five hundred thousand dollars ($500,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 6. Article 3 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.2. Report on administration of capital punishment laws.**

(a) The Division of Criminal Statistics shall annually prepare and transmit to the General Assembly and the Governor a report concerning the administration of capital punishment laws by the North Carolina State government.

(b) The report required under subsection (a) of this section shall include the following categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought and the percentage in which it is imposed by judicial district.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of the juries, and on the exclusion of otherwise eligible and available jurors from the cases.

(5) The percentage of capital cases in which counsel is retained by the defendant and the percentage in which counsel is appointed by the court.

(6) An analysis of the rates of compensation paid in capital cases to appointed counsel by judicial district.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside and the reasons therefor.

(8) The percentage of cases in which a person who was arrested for a crime was later eliminated as a suspect based on DNA evidence, along with the crime for which the person was arrested.

(c) The Attorney General shall ensure that the reports referred to in subsection (a) of this section are distributed to State print and broadcast media and posted on an Internet website maintained by the Department of Justice."

SECTION 7. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

for Sok

EDITION No. _____

H. B. No. [illegible] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Blue
Sen.)

1 moves to amend the bill on page 4, line [illegible]

2 ( ) WHICH CHANGES THE TITLE [illegible]

3 by [illegible]

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

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14 _____

15 _____

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17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 884 A BILL TO BE ENTITLED AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

☐ 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 884*
PROPOSED COMMITTEE SUBSTITUTE H884*-PCS3397-SA-6

Short Title: Innocence Protection Act. (Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

"~~(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA sample shall be expunged. The DNA record, and any

samples, analyses, or other documents relating to the record, whether in the possession of the State DNA Database or Databank, any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies, shall be returned to the individual or to the attorney who represented the individual at the time the reversal or pardon was granted. The order reversing and dismissing the conviction or the instrument granting the pardon shall be accompanied by an order of expungement, and a certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply with this section."

SECTION 3. Article 13 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant or the defendant's representative shall have access before trial to any DNA samples and analyses performed in connection with the case in which the defendant is charged.

(b) The court, in response to a motion for such comparison by a defendant, shall order that DNA information from a crime scene sample obtained in the course of the investigation of an alleged crime be checked against the DNA records and profiles maintained by or available through the State DNA Database and Databank and the national DNA index system, and that the results of the check be disclosed to the defendant and to the prosecutor whose jurisdiction includes the location of the alleged commission of the crime, upon a showing by the defendant that the analysis may be material to the defendant's defense and that the request is reasonable.

"**§ 15A-268. Preservation of samples of biological materials.**

(a) Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity that, in the course of a criminal investigation, collects evidence containing DNA shall preserve a sample of any biological material secured in connection with the criminal case for the period of time the person remains incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) The governmental entity may dispose of biological material before the expiration of the period of time described in subsection (a) of this section if all the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provision of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, a request under penalty of perjury that the material not be

destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to G.S. 15A-269 that is followed within 180 days by a motion for DNA testing pursuant to G.S. 15A-269, unless a request for extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

"**§ 15A-269. Request for post-conviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction in the defendant's case for performance of forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on the evidence using current technology, and if the results had been admitted in the trial resulting in the judgment, there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(c) In cases in which the defendant has been convicted of first degree murder and is in custody awaiting imposition of the death penalty, the State shall perform forensic DNA testing of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the judgment; and

(2) Meets either of the following conditions:

a. It was not tested previously.

b. It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

At the request of either the prosecution or the defense, the testing shall be performed before an execution date is set, and the results of the testing shall be provided to all counsel and to the Governor before the execution is carried out.

(d) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent.

(e) The cost of DNA testing ordered under this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

(f) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court may order that the SBI be required to give priority to the DNA testing ordered pursuant to this section.

"**§ 15A-270. Post-test procedures.**

(a) Notwithstanding any other provision of law, upon receipt of the results of the DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court:

(1) Shall dismiss the motion; and

(2) In the case of a defendant who is not indigent, may assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are favorable to the defendant, the court shall enter any order that serves the interests of justice, including an order:

(1) Vacating and setting aside the judgment;

(2) Discharging the defendant, if the defendant is in custody;

(3) Presentencing the defendant; or

(4) Granting a new trial."

SECTION 4. This act becomes effective December 1, 2001, and applies to all offenses committed on or after that date and all actions and proceedings pending in the courts of this State on or after that date.

House Judiciary I Committee

April 24, 2001
10:00 A.M.

Minutes

The House Judiciary I Committee met on Tuesday, April 24, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Gray, Insko, Nesbitt, Redwine, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Alice Underhill was recognized for an explanation of House Bill 929, AN ACT TO RESTORE EXTRATERRITORIAL JURISDICTION AND RELATED POWERS TO THE TOWN OF MINNESOTT BEACH, (Attachment III). She said that the local bill would re-establish extraterritorial jurisdiction to the Town of Minnesott Beach. The town had this annexation authority prior to legislation that abolished it in 1977. At a subsequent time, annexation authority was re-instituted, but the right to have extraterritorial jurisdiction was not re-implemented.

A bill analysis prepared by Mr. Frank Folger, Committee Counsel, is attached, (Attachment IV).

Representative Sutton moved that the bill be given a favorable report. The motion carried, (Attachment V).

Representative Edgar Starnes was recognized for a recommendation regarding House Bill 792, AN ACT DEFINING EXTRATERRITORIAL BOUNDARIES IN JURISDICTIONS WITH COUNTYWIDE ZONING, (Attachment VI). He requested that the bill be recommended for a study.

Representative Sutton was recognized for an explanation of House Bill 140, AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment VII). He reminded the committee that the bill had been explained and discussed during the April 12, 2001 meeting.

Representative Sutton offered an amendment, (Attachment VIII), and moved its adoption. He said that the amendment would add the words "in whole or in part" when determining that the death penalty was obtained in whole or in part on the basis of race.

Upon vote of the committee, the amendment failed.

Representative Sutton offered a second amendment, (Attachment IX), and it was adopted.

Representative Sutton offered a third amendment, (Attachment X), and moved its adoption, and upon vote of the committee, the amendment was adopted.

Judge Hobgood, Administrative Office of the Courts, commented briefly on the bill

Mr. Matt Osborne, Administrative Office of the Courts, commented on the fiscal impact of the bill.

Considerable discussion followed.

Professor Jack Boger, University of North Carolina School of Law, responded to questions.

Representative Sutton moved that the amendments be rolled into a committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report.

Representative Arnold spoke in opposition to the bill.

Upon vote of the committee, the motion carried, (Attachment XI).

Representative Starnes was recognized to explain House Bill 793, AN ACT TO CREATE THE CRIMINAL OFFENSES OF INDECENT BEHAVIOR BETWEEN MINORS FOR THE PURPOSE OF PRODUCING INDECENT PHOTOGRAPHS OR OTHER ELECTRONIC VISUAL MATERIALS AND DISSEMINATION OF INDECENT MATERIALS BY MINORS, (Attachment XII). Representative Starnes said that the bill came about as a result of a situation that occurred in a middle school in his county where a thirteen-year-old boy and girl had taken nude photographs of one another and had shown them around the school. After inquiring of the sheriff, the principal was told that no law had been violated.

Ms. Susan Sitze, Committee Counsel, said that the bill creates an offense that is a Class 3 misdemeanor in all cases. She said that the bill would create an offense for minors that is not an offense for adults.

Committee discussion followed and it was decided to remove the bill from the agenda to allow for additional work on the language.

Representative Verla Insko was recognized to continue the discussion of House Bill 941, AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION, (Attachment XIII). The bill was explained and a proposed committee substitute was adopted for discussion during the afternoon meeting of the committee on April 18, 2001, (Attachment XIV). Representative Insko offered an amendment, (Attachment XV), and moved its adoption. The amendment would remove the classification of "marital status" from the bill. The amendment was adopted.

Representative Insko said that the bill provides a uniform state law that would serve as an umbrella for the local human rights commissions and ordinances that now exist under local bills.

Representative Nesbitt moved that the amendment be rolled into a new committee substitute, that the committee substitute be given a favorable report and the original bill and unfavorable report.

Representative Gray suggested that the effective date should be changed.

Representative Insko noted that Mr. Folger had suggested a need for a change in the title of the bill.

Following discussion, it was determined that the date did not need to be changed.

Representative Nesbitt offered an amendment (Attachment XVI), to change the title of the bill. The amendment was adopted.

Representative Insko moved that the two amendments be rolled into a new committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report.

Representative Arnold asked for a clarification of "familial."

Mr. Folger said that "familial" refers to the existence of children in a family.

Mr. Bill Brooks, North Carolina Family Policy Council, said that the council had a very hard time trying to clearly define "familial," and noted some concerns regarding the bill.

The motion was before the committee and upon a vote, the motion carried, (Attachment XVII). Representative Arnold voted against the motion. A copy of the favorable committee substitute is attached, (Attachment XVIII).

Representative Holliman was recognized for an explanation of House Bill 1154, AN ACT TO AMEND THE CRIME VICTIM'S RIGHTS ACT, (Attachment XIX). He offered a proposed committee substitute, (Attachment XX).

Representative Arnold moved that it be adopted for the purpose of discussion. The motion carried.

Representative Holliman briefly explained the changes made by each section of the bill designed to fine-tune the victim's rights act.

Ms. Karen Taylor George, Department of Corrections, stated that the department was agreeable with the provisions of the bill, but that they thought the section of the bill regarding the confining of inmates away from victims should be amended. She said that an offender may have to sometimes be housed in the county where the victim resides because of possible confidential issues such as health issues, mental health issues, or a security issue.

Representative Gray offered an amendment, (XXI), and moved its adoption. The amendment would remove the language on line 21 of page 7. The amendment was adopted.

Judge Hobgood commented briefly on some of the provisions that duplicate requirements that are already in place.

Donna Pygott, Director, North Carolina Victim's Assistance Network, responded to the concerns voiced by Judge Hobgood.

The bill was displaced until the afternoon meeting of the committee and the meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL24, 2001
10:00 A.M.

AGENDA

HOUSE BILL 140 – RACIAL JUSTICE ACT
REPRESENTATIVE RON SUTTON

HOUSE BILL 792 – COUNTY-WIDE ZONING/ETJ
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 793 – INDECENT BEHAVIOR BETWEEN MINORS
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 929 – MINNESOTT BEACH ETJ
REPRESENTATIVE ALICE UNDERHILL

HOUSE BILL 941 – COUNTY ANTIDISCRIMINATION ORDINANCES
REPRESENTATIVE VERLA INSKO

HOUSE BILL 1127 – DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1154 – CRIME VICTIMS' RIGHTS ACT AMENDMENTS
REPRESENTATIVE HUGH HOLLIMAN

HOUSE BILL 1217 – NOTIFY DWI LIENHOLDERS IMMEDIATELY
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1224 – CONSTRUCTION CONTRACTS/RETAINAGE REFORM
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1225 – OPEN MEETINGS PENDING LITIGATION
REPRESENTATIVE MARTIN NESBITT

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — **April 24, 2001 10:00 am meeting**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Hoffman	NCSBA
Ron Moore	DOJ Atty DOJ 28
Tom Kirby	DOJ Atty DOJ 21
Lisa to fill	Carolinas HealthCare
Lao Rupert	CYPC
Rev. G. T. Allison	N.C. NAACP
Hugh McMillan	Coca-Cola Company Consolidated
Andy Romanet	ACLU
Margaret Westbrook	Kennedy Covington
Bob Reo	ACLU
Earl A. Byrd	New Hanover Human Relations Comm.
Willie Hartsfield	C-M Comm. Rel. Comm.
[illegible]	Lawyer PO Box 4502 Asheville 68
Annette Moon	Drake County
Robert L. Davis	N.C. Human Rel. Commission
Hugh B. Grant	Clayton County Human Relations + NC HRWA
Eugene E. Williams	NC Chapter Nat. Assn. of Human Rights Workers
Loretta Braswell	Rocky Mount Human Rel. - NCNAHWR
Geoffrey E. Gledhill	Orange County Atty
JOHN SHAW	NC CHAPTER NATIONAL ASSOCIATION OF HUMAN RIGHTS WORKERS
Julia White	DOJ
Jon Boney Jr	Clarence News NC Press Assn.
Karl Knapp	City of Winston-Salem
Sylvia Deberry	DHHS
Betty Wickham	Lilly
Glenn Jernigan	Monsanto

VISITOR REGISTRATION SHEET

JUDICIARY I — **April 24, 2001 10:00 am meeting**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Darlene Kimsey	CBA High Point
Joy Barbour	Concerned Bikers Assoc./ABATE of N.C.
Bill Wilson	NCATL
Bill Taylor	NCATL
Charles Skinner	NCATL
M. Osborne	AOC
John Kent	NCFPC
[illegible]	ALLA
Fred Edwards	DMV ENFORCEMENT
Jeff Moore	NCDPI
Heather Bowers	Intern
Katherine Davis	ElectriCities
Mel Chilton	NC VAN
Donna Pigott	NCVAN
Karen George	DOC
Ruth Sapp	NCDOT
Teri Saylor	NCPA
Bill Hawkins	NCPA
Ross M. Smith	PCS PHOSPHATE
Becki Rickert	Parker Poe Adams & Bernstein
Chris Rodgers	" "
Evelyn Hawthorne	UNC Chapel Hill
John Charles Boger	UNC Chapel Hill
Gerda Stein	Raleigh
Greg Chris Fitzsimon	Common Sense Foundation
LYMAN COOPER	CSX CORP

VISITOR REGISTRATION SHEET

JI — Name of Committee

4/24/01 — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lynn Cooper	CSX Corp
VLM-Brooks	NCPP
Sarai Schmidt	NC Justice Center
Beau Wilkes	NC Retail Coalition
Beth Pinn	Jordan Price
John Todd	MHA/NC
Michelle Cotton	Dmithodges

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 929*

Short Title:	Minnesott Beach ETJ.	(Local)
Sponsors:	Representatives Underhill and Wainwright (By Request) (Primary Sponsors).	
Referred to:	Judiciary I.	

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO RESTORE EXTRATERRITORIAL JURISDICTION AND RELATED POWERS TO THE TOWN OF MINNESOTT BEACH.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of Chapter 478 of the 1977 Session Laws does not apply to the Town of Minnesott Beach.

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

HOUSE BILL 929:
Minnesott Beach ETJ

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representatives Underhill and Wainwright
Date:	April 24, 2001		
Version:	First Edition	**Summary by:**	Frank W. Folger Committee Counsel

SUMMARY: This bill would allow Minnesott Beach to exercise extraterritorial jurisdiction by exempting Minnesott Beach from the application of a local act prohibiting small towns in Pamlico County from exercising ETJ.

CURRENT LAW: N.C.G.S. §160A-360 allows a city to exercise extraterritorial jurisdiction (ETJ) over a defined area outside the boundaries of the city. Exercising ETJ allows a city to plan and regulate development in limited adjacent or surrounding areas with the same authority granted to the city within its boundaries. Article 19 of G.S. Chapter 160A provides this authority for planning and regulation of development by the cities.

For any city or town regardless of population, ETJ can be exercised within a defined area extending no more can one mile beyond its limits; for cities with populations between 10,000 and 25,000, the extension can be up two miles; and for cities with population exceeding 25,000, the ETJ can cover up to three miles beyond the city limits. N.C.G.S. §160A-362 provides for extraterritorial representation.

Section 3 of Chapter 478 of the 1977 Session Laws prohibits any town or city in Pamlico County with a population of 1,000 or less from exercising ETJ outside its corporate limits.

BILL ANALYSIS: This bill would allow Minnesott Beach to exercise ETJ, exempting it from the prohibition against exercising ETJ in the referenced session law.

EFFECTIVE DATE: Effective upon becoming law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 929 A BILL TO BE ENTITLED AN ACT TO RESTORE EXTRATERRITORIAL JURISDICTION AND RELATED POWERS TO THE TOWN OF MINNESOTT BEACH.

☒ 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 792

Short Title:	Countywide Zoning/ETJ.	(Public)
Sponsors:	Representative Starnes.	
Referred to:	Judiciary I.	

March 26, 2001

A BILL TO BE ENTITLED

AN ACT DEFINING EXTRATERRITORIAL BOUNDARIES IN JURISDICTIONS WITH COUNTYWIDE ZONING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-320 reads as rewritten:

"**§ 153A-320. Territorial jurisdiction.**

Each of the powers granted to counties by this Article, by Chapter 157A, and by Chapter 160A, Article 19 may be exercised throughout the county except as otherwise provided in G.S. 153A-342(c) and G.S. 160A-360."

SECTION 2. G.S. 153A-342 reads as rewritten:

"**§ 153A-342. Districts; zoning less than entire jurisdiction.**

(a) A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit. Property may be placed in a special use district or conditional use district only in response to a petition by the owners of all the property to be included. Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

(b) A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally

contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated.

(c) Notwithstanding the provisions of subsection (b) of this section:

(1) If a county, before April 1, 2001, has zoned all areas of the county not lying within the limits or extraterritorial jurisdiction of a city, no city's extraterritorial jurisdiction in that county shall be expanded further under G.S. 160A-360.

(2) If a county, on or after April 1, 2001, zones all areas of the county not lying within the limits or the extraterritorial jurisdiction of a city, and a city within the county extends its extraterritorial boundaries after the effective date of the county's ordinance, no city's extraterritorial jurisdiction in that county shall be expanded further under G.S. 160A-360."

SECTION 3. G.S. 160A-360(a) reads as rewritten:

"(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. ~~In addition,~~Except as provided by G.S. 153A-342(c), any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 140*

Short Title:	Racial Justice Act.	(Public)
Sponsors:	Representatives Sutton, Fitch, Luebke; Alexander, Boyd-McIntyre, Goodwin, Hackney, Hall, Insko, Lucas, McAllister, Wainwright, Weiss, and Womble.	
Referred to:	Judiciary I.	

February 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death that was sought or obtained on the basis of race.

"**§ 15A-2011. Pretrial procedures.**

(a) A finding that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought.

(b) Evidence relevant to establish a finding that race was the basis of the decision to seek a death sentence may include statistical evidence or other evidence, or both, that irrespective of statutory factors death sentences were sought significantly more frequently:

(1) Upon persons of one race than upon persons of another race; or

(2) As punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(c) The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death

sentence in his or her case. The claim shall be raised by the defendant at the pretrial conference. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis of the decision to seek the death sentence, the court shall order that a death sentence shall not be sought.

(d) The defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek the death penalty. The State may offer evidence in rebuttal of the claims or evidence of the defendant.

"**§ 15A-2012. Posttrial procedure.**

(a) A finding that race was an improper basis upon which a death sentence was obtained may be established if the court finds that race was a significant factor in decisions to exercise peremptory challenges during jury selection.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to exercise peremptory challenges during jury selection may include statistical evidence, or other evidence, or both. Evidence may include sworn testimony of attorneys, prosecutors, and/or law enforcement officers or other members of the criminal justice system."

SECTION 2. This act is effective when it becomes law and applies retroactively.

failed

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 140*

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

H140-ASA-12 [v.1]

Date _____,2001

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

Representative

moves to amend the bill on page 1, line 12 by rewriting the line to read:
"obtained, in whole or in part, on the basis of race."

and on page 2, line 7 by rewriting the line to read:
"that race was the basis, in whole or in part, of the decision to seek the death penalty. The State may offer"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 140*

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

H140-ASA-13 [v.1]

Date _____,2001

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

Representative

moves to amend the bill on page 1, line 15
by deleting the phrase "significant factor" and inserting "statistically significant factor".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

ATTACHMENT X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 140*

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

H140-ASA-14 [v.1]

Date _____,2001

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

Representative

moves to amend the bill on page 2, lines 8-9
by inserting between those lines a new subsection to read:
"(e) The pertinent period for establishing that race was a statistically significant factor in the decision to seek or impose a death sentence shall be 10 years preceding the trial."

SIGNED _____
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(s) **HACKNEY** (Chair) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 140 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 793

Short Title:	Indecent Behavior Between Minors.	(Public)
Sponsors:	Representatives Starnes; and Hilton.	
Referred to:	Judiciary I.	

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSES OF INDECENT BEHAVIOR BETWEEN MINORS FOR THE PURPOSE OF PRODUCING INDECENT PHOTOGRAPHS OR OTHER ELECTRONIC VISUAL MATERIALS AND DISSEMINATION OF INDECENT MATERIALS BY MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-190.21. Indecent behavior between minors to produce indecent visual materials; dissemination of indecent visual material by minors.**

(a) It is a Class 3 misdemeanor for any minor willfully to expose the private parts of his or her person in the presence of any other minor for the purpose of producing a photograph, videotape, computer image, or other electronic visual media.

(b) It is a Class 3 misdemeanor for any minor willfully to photograph, videotape, or use any other electronic visual medium to produce a photograph, videotape, or other electronic visual image that fully exposes the private parts of another minor.

(c) It is a Class 3 misdemeanor for any minor willfully to disseminate a photograph, videotape, computer image, or other electronic visual image obtained in violation of subsection (a) or (b) of this section.

(d) This section does not apply if each minor participating in the acts prohibited by this section had obtained the consent of the minor's parent or legal guardian prior to committing the acts described by this section."

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 1

HOUSE BILL 941*

Short Title:	County Antidiscrimination Ordinances.	(Public)
Sponsors:	Representatives Insko and Hackney.	
Referred to:	Judiciary I.	

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited include, but are not limited to, race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during

an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party where the Commission has failed to make a determination on the issue of reasonable cause in a timely manner; determines that reasonable cause does not exist; where conciliation efforts have failed; and where the Commission has made a determination that there is probable cause to believe that discrimination took place.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or

parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city or county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to cities and counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 941*
PROPOSED COMMITTEE SUBSTITUTE H941-CSSO-20 [v.2]

4/18/2001 9:13:24 AM

Short Title: County Antidiscrimination Ordinances. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by

the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 2. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-199. Ordinance prohibiting discrimination.**

(a) A city may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, marital status, familial status, and veteran status.

(b) Any city that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil

Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The city may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the city.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) This section applies to cities with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XV**

(Please type or use ballpoint pen)

EDITION No. H 941-CSSO-20 [v.2]

H. B. No. 941 DATE April 24, 2001

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Insko
Sen.)

1 moves to amend the bill on page 1, line 12
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "marital status,".
4 and on page 3, line 20
5 by deleting the phrase "marital status,"
6
7
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10
11
12
13
14
15
16
17
18
19

SIGNED Ilsa Insko

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Insko
adapted
4-24

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XVI**

(Please type or use ballpoint pen)

EDITION No. PCS 941

H. B. No. _____ DATE 4/24/01

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbitt
~~Sen.)~~

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by inserting b/t the words "THOUSAND" and "TO" & the words "OR MORE"

and on page 5, line 1, by rewriting the line to read:

"SECTION 3. This act is effective October 1, 2001."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Neulett
4-24
Title and

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 941 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

☐ 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 941*
PROPOSED COMMITTEE SUBSTITUTE H941*-PCS8205-SO-20

Short Title: County Antidiscrimination Ordinances. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES IN NORTH CAROLINA WITH POPULATIONS OF ONE HUNDRED THOUSAND OR MORE TO ENACT ORDINANCES PROHIBITING DISCRIMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Ordinances prohibiting discrimination.**

(a) A county may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, familial status, and veteran status.

(b) Any county that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by

the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The county may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the county.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any county within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) If an ordinance is adopted by a county, the ordinance shall apply to any part of the county not within a municipally incorporated city, town, or village in the county. The governing board of a city, town, or village within the county adopting an ordinance may, by resolution, permit an ordinance adopted by the county to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission. If it does so, it shall give written notice to the county of its withdrawal of permission. Thirty days after the date the county receives the permission withdrawal notice, the ordinance ceases to be applicable within the city, town, or village.

(f) This section applies to counties with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 2. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-199. Ordinances prohibiting discrimination.**

(a) A city may adopt an ordinance designed to prohibit discrimination in employment, housing, and public accommodations. The bases of discrimination which may be prohibited are limited to race, color, religion, gender, national origin, age, disability, familial status, and veteran status.

(b) Any city that has adopted an ordinance under this section may, in that ordinance, adopt procedures and delegate powers to a Human Relations Commission ('Commission') which are necessary and proper for carrying out and enforcing the ordinance. To assist in the enforcement of the ordinance, the Commission has, but is not limited to, the following powers:

(1) Receiving and reviewing complaints that allege a violation of the ordinance has occurred, is occurring, or is about to occur.

(2) Conducting investigations into the basis of complaints. In this regard, the Commission may issue subpoenas compelling the production of documents or compelling witnesses, or both, to appear before the Commission to give testimony and to take depositions and serve interrogatories in accordance with the North Carolina Rules of Civil Procedure. In the event any person refuses to comply with a subpoena or discovery request, the Commission may apply to the superior court for an order to compel compliance with the subpoena or discovery request. Information and records discovered by the Commission during an investigation or conciliation may be maintained in confidence by the Commission and are not subject to the provisions of G.S. 132-6 and G.S. 132-9 until and unless they are offered into evidence in a judicial proceeding authorized by this section and an ordinance.

(3) Applying to the superior court for mandatory or prohibitory injunctive relief, or both, pursuant to Rule 65 of the North Carolina Rules of Civil

Procedure if it determines, after a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of the ordinance.

(4) Making a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is about to occur.

(5) Dismissing complaints in such cases as the Commission determines that reasonable cause does not exist.

(6) Issuing a right-to-sue letter to any complaining party upon request after 60 days following receipt of a complaint.

(7) Attempting to conciliate a resolution of the complaint between the parties.

(8) Entering into conciliation agreements in such instances where conciliation efforts have been successful.

(9) Administrative cause determinations.

The city may, in enacting an ordinance, delegate the powers of the Commission under this section and the ordinance to an administrative department of the city.

(c) The ordinance may provide that complainants who receive a right-to-sue letter from the Commission may bring a civil action in superior court against the respondent within one year of the issuance of the right-to-sue letter. The ordinance shall provide that in a civil action filed which seeks damages from the respondent, either the complainant or the respondent may request, and upon request, is entitled to a jury trial. The superior court judge or jury, as appropriate, shall be authorized to impose mandatory and prohibitory injunctive relief; compensatory damages; and, unless otherwise prohibited by law, punitive damages; and any other appropriate relief, provided that:

(1) Punitive damages may be ordered only if the fact finder finds that the respondent engaged in a practice made unlawful under the ordinance with malice or with reckless indifference to the protected rights of the complainant; and

(2) In cases involving unlawful employment practices, the fact finder may order reinstatement or hiring, with back pay.

In any action brought in the superior court pursuant to the ordinance, the court may allow the prevailing party reasonable costs and attorneys' fees from the other party or parties. Attorneys' fees, however, may not be awarded to the Commission, and a prevailing respondent may be awarded court costs and reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(d) The governing body of any city within the State that has adopted an ordinance may enter into work-sharing agreements with the State and the federal government.

(e) This section applies to cities with a population of 100,000 or more, as determined by the most recent federal decennial census."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1154

Short Title:	Crime Victims' Rights Act Amendments.	(Public)
Sponsors:	Representatives Holliman; and McLawhorn.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-830(a)(3) reads as rewritten:

"(3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Department of Correction."

SECTION 2. G.S. 15A-831 reads as rewritten:

"**§ 15A-831. Responsibilities of law enforcement agency.**

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, ~~and~~ telephone number, and any other identifying information associated with the case, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement ~~agency.~~ agency on the status of the accused during the pretrial process. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number."

SECTION 3. G.S. 15A-832 reads as rewritten:

"**§ 15A-832. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type ~~which~~ that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The form shall be included with the final judgment and ~~commitment~~ commitment, or judgment suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file. In the event that the form required by this subsection is not complete at the time of sentencing, the district attorney's office shall be responsible for submitting a copy of that form to the clerk of superior court and to the custodial agency within 10 business days or as soon as practicable."

SECTION 4. Article 46 of Chapter 15A of the General Statutes is amended by adding two new sections to read:

"**§ 15A-832.1. Responsibilities of judicial officials issuing arrest warrants.**

In issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(7)g., a judicial official shall record the victim's name, address, date of birth, social security number, race, sex, telephone number, and any other identifying information associated with the case on a form separate from the warrant and developed for the purpose of recording that information.

"**§ 15A-832.2. Responsibilities of the clerk of superior court.**

(a) When the identification form required by G.S. 15A-832(g) is included with the final judgment and commitment, or judgment suspending sentence, the clerk of superior court shall submit the form along with the final judgment and commitment to the custodial agency.

(b) In the event that restitution is ordered pursuant to Article 81C of this Chapter, upon the first payment of restitution to the victim from the clerk of superior court, the clerk shall provide the victim with written notice containing the following:

(1) The order of restitution.

(2) A reminder that the victim is responsible for notifying the district attorney's office and any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(3) The name and phone number of persons with the Division of Adult Probation and Parole and the Division of Prisons to contact in the event of nonpayment of restitution by the defendant."

SECTION 5. G.S. 15A-833 reads as rewritten:

"**§ 15A-833. Evidence of victim impact.**

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. A representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court at the victim's request."

SECTION 6. G.S. 15A-835 reads as rewritten:

"**§ 15A-835. Posttrial responsibilities.**

(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the victim's name, address, ~~and~~ telephone ~~number.~~number, and any other identifying information associated with the case. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

~~(e) The Conference of District Attorneys shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.~~"

SECTION 7. G.S. 15A-836 reads as rewritten:

"**§ 15A-836. Responsibilities of agency with custody of defendant.**

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's

minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody, within 72 ~~hours.~~ hours, except that if a victim has notified the agency that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.

(5) The defendant's capture, within ~~72~~ 24 hours.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.

(7) The defendant's death.

(b) Notifications required in this section shall be provided within ~~30~~ 60 days of the date the custodial agency takes custody of the defendant or within ~~30~~ 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 8. G.S. 15A-837 reads as rewritten:

"**§ 15A-837. Responsibilities of Division of Adult Probation and Parole.**

(a) The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The ~~date~~ date, time, and location of ~~a~~ any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(4a) The defendant's election to serve an active sentence rather than accept the terms of probation.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant's absconding supervision, within 72 hours.

(7) The capture of a defendant described in subdivision (6) of this section, within 72 hours.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 9. This act becomes effective October 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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HOUSE BILL 1154
PROPOSED COMMITTEE SUBSTITUTE H1154-CSLL-21 [v.4]

4/23/2001 4:14:41 PM

Short Title: Crime Victims' Rights Act Amendments. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS ACT AND TO OTHERWISE IMPROVE THE RIGHTS OF VICTIMS OF CRIME IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-830(a)(3) reads as rewritten:

"(3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Department of Correction."

SECTION 2. G.S. 15A-831 reads as rewritten:

"**§ 15A-831. Responsibilities of law enforcement agency.**

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, ~~and~~ telephone number, and any other identifying information associated with the case, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement ~~agency.~~ agency on the status of the accused during the pretrial process. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number."

SECTION 3. G.S. 15A-832 reads as rewritten:

"**§ 15A-832. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type ~~which~~ that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The form shall be included with the final judgment and ~~commitment~~ commitment, or judgment suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file. In the event that the form required by this subsection is not complete at the time of sentencing, the district attorney's office shall be responsible for submitting a copy of that form to the clerk of superior court and to the custodial agency within 10 business days or as soon as practicable."

SECTION 4. Article 46 of Chapter 15A of the General Statutes is amended by adding two new sections to read:

"**§ 15A-832.1. Responsibilities of judicial officials issuing arrest warrants.**

In issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(7)g., a judicial official shall record the victim's name, address, date of birth, social security number, race, sex, telephone number, and any other identifying information associated with the case on a form separate from the warrant and developed for the purpose of recording that information.

"**§ 15A-832.2. Responsibilities of the clerk of superior court.**

(a) When the identification form required by G.S. 15A-832(g) is included with the final judgment and commitment, or judgment suspending sentence, the clerk of superior court shall submit the form along with the final judgment and commitment to the custodial agency.

(b) In the event that restitution is ordered pursuant to Article 81C of this Chapter, upon the first payment of restitution to the victim from the clerk of superior court, the clerk shall provide the victim with written notice containing the following:

(1) The order of restitution.

(2) A reminder that the victim is responsible for notifying the district attorney's office and any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(3) The name and phone number of persons with the Division of Adult Probation and Parole and the Division of Prisons to contact in the event of nonpayment of restitution by the defendant."

SECTION 5. G.S. 15A-833 reads as rewritten:

"**§ 15A-833. Evidence of victim impact.**

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. A representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court at the victim's request."

SECTION 6. G.S. 15A-835 reads as rewritten:

"**§ 15A-835. Posttrial responsibilities.**

(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the victim's name, address, ~~and~~ telephone ~~number.~~number, and any other identifying information associated with the case. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

~~(e) The Conference of District Attorneys shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.~~"

SECTION 7. G.S. 15A-836 reads as rewritten:

"**§ 15A-836. Responsibilities of agency with custody of defendant.**

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's

minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody, within 72 ~~hours.~~ hours, except that if a victim has notified the agency that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.

(5) The defendant's capture, within ~~72~~ 24 hours.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.

(7) The defendant's death.

(b) Notifications required in this section shall be provided within ~~30~~ 60 days of the date the custodial agency takes custody of the defendant or within ~~30~~ 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 8. G.S. 15A-837 reads as rewritten:

"**§ 15A-837. Responsibilities of Division of Adult Probation and Parole.**

(a) The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The ~~date~~ date, time, and location of ~~a~~ any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant's absconding supervision, within 72 hours.

(7) The capture of a defendant described in subdivision (6) of this section, within 72 hours.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 9. G.S. 148-10.2 reads as rewritten:

"**§ 148-10.2. Policy: ~~Death row~~ Certain inmates not to contact family members of victims.**

(a) It shall be the policy of the Department of Correction to prohibit death row inmates from contacting the surviving family members of the victims without the written consent of the family members being contacted. For purposes of this ~~section,~~ subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the surviving family members of the victim.

(b) At the request of the victim or a family member of the victim, the Department of Correction shall prohibit an inmate convicted of an offense listed in G.S. 15A-830(7) from contacting the victim or family member of the victim. For purposes of this subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the victim or family member.

(c) The Department of Correction shall develop and impose sanctions against any inmate who violates the provisions of this section."

SECTION 10. Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-5.1. Confining inmates away from victims.**

If a victim or immediate family member of a victim requests that, for the safety of the victim or family member, an inmate be confined outside the county where the victim or family member resides or is employed, the Department shall make every effort to house the inmate in a facility in another county. If it is not possible to house the inmate in such a facility, the Department shall notify the victim or family member in writing and explain the reason for the Department's inability to comply with the request."

SECTION 11. This act becomes effective October 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XXI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1154-CSLL-21[v.4] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Gray
Sen.)

1 moves to amend the bill on page 7, line 20-21
2 ( ) WHICH CHANGES THE TITLE
3 by deleting rewriting the lines to read:
4 "in such a facility, the Department shall notify
5 the victim or family member in writing."
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Judiciary I Committee

April 24, 2001
P.M. Meeting

Minutes

The House Judiciary I Committee met on Tuesday April 24, 2001 at 3:30 p.m. in Room 1228 of the Legislative Building to continue the agenda of the 10:00 a.m. meeting. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Gray, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that Representative Nesbitt had requested that House Bill 1224, AN ACT TO PROHIBIT THE WITHHOLDING OF RETAINAGE ON CONSTRUCTION PROJECTS WHEN CERTAIN BONDS ARE PROVIDED AND TO REQUIRE, IN CONNECTION WITH CERTAIN PRIVATE CONTRACTS FOR IMPROVEMENTS TO REAL PROPERTY, A LINE ITEM RELEASE OF RETAINAGE BASED ON THE PERCENTAGE OF WORK COMPLETED AND APPROVED, (Attachment III), be sent to a study committee.

Representative Holliman was recognized for the continuation of the discussion of the proposed committee substitute for House Bill 1154, AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS ACT AND TO OTHERWISE IMPROVE THE RIGHTS OF VICTIMS OF CRIME IN NORTH CAROLINA, (Attachment IV). The bill was discussed during the 10:00 a.m. meeting of the committee at which time one amendment was adopted. Representative Holliman stated that the objections that had been voiced by the Administrative Office of the Courts had been withdrawn once they realized that the wording in question applied only to domestic abuse cases.

Representative Sutton offered an amendment, (Attachment V), and moved its adoption. The amendment would delete the "time" requirement in notification responsibilities of the Division of Adult Probation and Parole. The amendment was adopted

Representative Gray moved a favorable report for a new committee substitute incorporating the two adopted amendments, and an unfavorable report for the original bill.

Chairman Hackney noted that Sections 9 and 10 of the bill would incorporate the provisions from Representative Eddins' bill, House Bill 676, AN ACT TO IMPROVE THE RIGHTS OF VICTIMS OF CRIME IN NORTH CAROLINA BY DISALLOWING WORK RELEASE FOR PERSONS CONVICTED OF MURDER OR MANSLAUGHTER, REQUIRING RESTITUTION FOR PRISONERS WITH WORK-RELEASE PRIVILEGES, SCREENING DEATH ROW VISITATION, LIMITING CONTACT WITH VICTIMS, REQUIRING THAT VIOLENT INMATES BE HOUSED AT REASONABLE DISTANCES FROM THEIR VICTIMS, IMPROVING NOTIFICATION TO VICTIMS ABOUT ESCAPES, AND REQUIRING CERTAIN PUBLIC INFORMATION ABOUT DEATH ROW INMATES TO INCLUDE THE NAMES OF THE VICTIMS AND INFORMATION ABOUT

THE CRIMES COMMITTED AGAINST THEM. This bill had been scheduled to be heard during the April 25 meeting, but would now be removed from the agenda.

Discussion followed regarding prohibiting contact between an inmate and the victim or family member of the victim.

Representative Sutton offered a second amendment, (Attachment VI), to amend the bill on line 8 on page 7, and moved adoption of the amendment. The amendment would allow the victim, who is not a minor, to make the decision as to whether or not to have contact with the inmate without intervention from other family members. The motion carried.

Representative Gray's motion was before the committee. The motion carried, (Attachment VII). A copy of the committee substitute is attached, (Attachment VIII).

Vice Chairman Nesbitt chaired the meeting during the discussion of the following bill.

Representative Hackney was recognized for a continuation of the discussion of House Bill 1217, AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS AND INNOCENT MOTOR VEHICLE OWNERS WHEN A MOTOR VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS. The bill was discussed and a proposed committee substitute was adopted for the purpose of discussion during the April 18, 2001 afternoon meeting of the committee, (Attachment IX). Chairman Hackney offered a new proposed committee substitute, (Attachment X), and moved that it be adopted for the purpose of discussion. He said that the new committee substitute addressed questions that some members had expressed at the earlier meeting.

Representative Arnold moved a favorable report for the committee substitute. The motion carried, (Attachment XI).

Chairman Hackney resumed the chair and Representative Nesbitt was recognized for an explanation of House Bill 1225, AN ACT RELATING TO DISCUSSION OF PENDING LITIGATION IN CLOSED SESSIONS, (Attachment XII). He offered a proposed committee substitute, (Attachment XIII), and moved its adoption for the purpose of discussion. The motion carried. The bill would amend the Open Meetings Law to stipulate appropriate purposes for going into closed session in order to talk to an attorney. Those purposes are outlined in a bill analysis prepared by Mr. Rick Zechini, Committee Counsel, (Attachment XIV).

Speaking in support of the bill were:

- Mr. Tom Boney, Alamance News and The North Carolina Press Association
- Mr. Gary Govert, North Carolina Press Association

Speaking in opposition to the bill were:

- Mr. Jim Blackburn, North Carolina Association of County Commissioners
- Mr. Andrew Romanet, North Carolina League of Municipalities
- Mr. Sandy Sands, representing Carolinas Health Care

Representative Thompson spoke in opposition to the bill.

Committee discussion followed.

Representative Redwine moved a favorable report for the committee substitute.

Following a voice vote of the committee, division was called. It was determined that the motion for a favorable report failed.

Chairman Hackney reminded the members that the committee would meet the following morning at a time to be announced.

The meeting adjourned at 4:40 p. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL24, 2001
10:00 A.M.

AGENDA

HOUSE BILL 140 – RACIAL JUSTICE ACT
REPRESENTATIVE RON SUTTON

HOUSE BILL 792 – COUNTY-WIDE ZONING/ETJ
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 793 – INDECENT BEHAVIOR BETWEEN MINORS
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 929 – MINNESOTT BEACH ETJ
REPRESENTATIVE ALICE UNDERHILL

HOUSE BILL 941 – COUNTY ANTIDISCRIMINATION ORDINANCES
REPRESENTATIVE VERLA INSKO

HOUSE BILL 1127 – DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE
REPRESENTATIVE JOHN BLUST

HOUSE BILL 1154 – CRIME VICTIMS' RIGHTS ACT AMENDMENTS
REPRESENTATIVE HUGH HOLLIMAN

HOUSE BILL 1217 – NOTIFY DWI LIENHOLDERS IMMEDIATELY
REPRESENTATIVE JOE HACKNEY

HOUSE BILL 1224 – CONSTRUCTION CONTRACTS/RETAINAGE REFORM
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 1225 – OPEN MEETINGS PENDING LITIGATION
REPRESENTATIVE MARTIN NESBITT

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 24, 2001 pm meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers Assn.
Ron Aycock	NC Assn County Comm.
Charles Crower	NCATL
Karl Knapp	City of Winston-Salem
Gueller Hawthorne	UNC Chapel Hill
Margaret Westbrook	Kennedy Covington
Andy Romanet	NCLM
Jim Blackburn	Association of County Commissioners
[illegible]	ACLU
Neil Quiet	NCVAN
Donna Poggott	NCVAN
[illegible]	DOC
[illegible]	CCPS
Steve Hoffman	NCSBA
Kennard Joyce	NCHA
[illegible]	Tarheel Specialties Inc.
Jeff Moore	NCDPI
J. Edwards	NCDMV
Matt Osborne	AOC
John Bonitz Jr	Alamance News / NC Press Assn.
GARY GOVERT	NC PRESS ASSN
Catherine Davis	Electricities
Lisa Bakis	Carolinas Healthcare
Rob Schofield	NC Justice Ctr.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE BILL 1224

Short Title:	Construction Contracts/Retainage Reform.	(Public)
Sponsors:	Representatives Nesbitt; and M. Crawford.	
Referred to:	Judiciary I.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE WITHHOLDING OF RETAINAGE ON CONSTRUCTION PROJECTS WHEN CERTAIN BONDS ARE PROVIDED AND TO REQUIRE, IN CONNECTION WITH CERTAIN PRIVATE CONTRACTS FOR IMPROVEMENTS TO REAL PROPERTY, A LINE ITEM RELEASE OF RETAINAGE BASED ON THE PERCENTAGE OF WORK COMPLETED AND APPROVED.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read as follows:

"Article 3A.

"Retainage Under Construction Contracts and Contracts for Improvements to Real Property.

"**§ 44A-38. Withholding of retainage prohibited when payment and performance bonds provided.**

(a) On any private or public construction contract, when a contractor provides to the contracting body a performance bond and a payment bond that each complies with G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the construction contract amount, the contracting body shall not withhold retainage from the contractor. On any private or public construction contract, when a subcontractor provides to the contractor a performance bond and a payment bond that each complies with G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the construction contract amount, the contractor shall not withhold retainage from the subcontractor.

(b) On any private or public construction contract, when a contractor provides to the contracting body a performance bond and a payment bond that each complies with G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the construction contract amount, but the subcontractor does not provide to the contractor a

performance bond and a payment bond that each complies with G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the construction contract amount, the contractor shall release retainage to the subcontractor by line item in accordance with G.S. 44A-38.1(b).

"§ 44-38.1. Schedule of values for certain contracts; line-item release of retainage.

(a) Under a private contract, when the total amount of the improvements to real estate exceeds one hundred thousand dollars ($100,000), the contractor shall provide to the owner a schedule of values that contains a separate line item for the value for each separate aspect of the work of the contractor under the contract, and each subcontractor shall provide to the contractor a schedule of values that contains a separate line item for the value for each separate aspect of the work of that subcontractor under the contract. The total amount of the line items on each schedule of values shall equal the total amount of the respective contract.

(b) The contractor shall submit to the owner requests for periodic payment based upon the estimated work completed, expressed as a percentage, in connection with each separate line item under the schedule of values, and the owner shall pay the contractor for approved work accordingly. Each subcontractor shall submit to the contractor requests for periodic payment based upon the estimated work completed, expressed as a percentage, in connection with each separate line item under the schedule of values, and the contractor shall pay the subcontractor for approved work accordingly. When the work has been fully performed for each separate line item under the schedule of values and the owner has approved such work, the owner shall pay to the contractor the full amount of the separate line item under the schedule of values; the contractor shall pay to the subcontractor the full amount of the separate line item under the respective schedule of values; and neither the owner nor the contractor shall withhold any retainage or any other sum by any other designation. Approval and payment under this subsection shall not be construed as acceptance of defective or deficient work.

"§ 44A-38.2. Scope of Article.

(a) This Article does not apply to any contractor who has been issued a certificate to engage as a general contractor that is limited to the classification of a residential contractor under G.S. 87-10(b)(1a). This Article does not apply to improvements to real property when the real property is a family residence that satisfies the description under G.S. 83A-13.1(c)(1) as a project for which a license as an architect is not required under Chapter 83A of the General Statutes or to improvements to real property that is intended for residential purposes and that consists of 12 or fewer residential units.

(b) Nothing in this Article prevents the contracting body or the contractor, when payment is requested, from withholding payment to the contractor or subcontractor respectively for any one or more of the following reasons:

(1) Unsatisfactory job progress.

(2) Defective construction not remedied.

(3) Disputed work.

(4) Failure of either the contractor or subcontractor to make timely payments for labor, equipment, and materials supplied to the project."

SECTION 2. This act becomes effective October 1, 2001, and applies to all contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1154
PROPOSED COMMITTEE SUBSTITUTE H1154-CSLL-21 [v.4]

4/23/2001 4:14:41 PM

Short Title: Crime Victims' Rights Act Amendments. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS ACT AND TO OTHERWISE IMPROVE THE RIGHTS OF VICTIMS OF CRIME IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-830(a)(3) reads as rewritten:

"(3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Department of Correction."

SECTION 2. G.S. 15A-831 reads as rewritten:

"**§ 15A-831. Responsibilities of law enforcement agency.**

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, ~~and~~ telephone number, and any other identifying information associated with the case, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement ~~agency.~~ agency on the status of the accused during the pretrial process. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number."

SECTION 3. G.S. 15A-832 reads as rewritten:

"**§ 15A-832. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type ~~which~~ that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The form shall be included with the final judgment and ~~commitment~~ commitment, or judgment suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file. In the event that the form required by this subsection is not complete at the time of sentencing, the district attorney's office shall be responsible for submitting a copy of that form to the clerk of superior court and to the custodial agency within 10 business days or as soon as practicable."

SECTION 4. Article 46 of Chapter 15A of the General Statutes is amended by adding two new sections to read:

"**§ 15A-832.1. Responsibilities of judicial officials issuing arrest warrants.**

In issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(7)g., a judicial official shall record the victim's name, address, date of birth, social security number, race, sex, telephone number, and any other identifying information associated with the case on a form separate from the warrant and developed for the purpose of recording that information.

"**§ 15A-832.2. Responsibilities of the clerk of superior court.**

(a) When the identification form required by G.S. 15A-832(g) is included with the final judgment and commitment, or judgment suspending sentence, the clerk of superior court shall submit the form along with the final judgment and commitment to the custodial agency.

(b) In the event that restitution is ordered pursuant to Article 81C of this Chapter, upon the first payment of restitution to the victim from the clerk of superior court, the clerk shall provide the victim with written notice containing the following:

(1) The order of restitution.

(2) A reminder that the victim is responsible for notifying the district attorney's office and any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(3) The name and phone number of persons with the Division of Adult Probation and Parole and the Division of Prisons to contact in the event of nonpayment of restitution by the defendant."

SECTION 5. G.S. 15A-833 reads as rewritten:

"**§ 15A-833. Evidence of victim impact.**

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. A representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court at the victim's request."

SECTION 6. G.S. 15A-835 reads as rewritten:

"**§ 15A-835. Posttrial responsibilities.**

(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the victim's name, address, ~~and~~ telephone ~~number.~~number, and any other identifying information associated with the case. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

~~(e) The Conference of District Attorneys shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.~~"

SECTION 7. G.S. 15A-836 reads as rewritten:

"**§ 15A-836. Responsibilities of agency with custody of defendant.**

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's

minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody, within 72 ~~hours.~~ hours, except that if a victim has notified the agency that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.

(5) The defendant's capture, within ~~72~~ 24 hours.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.

(7) The defendant's death.

(b) Notifications required in this section shall be provided within ~~30~~ 60 days of the date the custodial agency takes custody of the defendant or within ~~30~~ 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 8. G.S. 15A-837 reads as rewritten:

"**§ 15A-837. Responsibilities of Division of Adult Probation and Parole.**

(a) The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The ~~date~~ date, time, and location of ~~a~~ any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant's absconding supervision, within 72 hours.

(7) The capture of a defendant described in subdivision (6) of this section, within 72 hours.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 9. G.S. 148-10.2 reads as rewritten:

"**§ 148-10.2. Policy: ~~Death row~~ Certain inmates not to contact family members of victims.**

(a) It shall be the policy of the Department of Correction to prohibit death row inmates from contacting the surviving family members of the victims without the written consent of the family members being contacted. For purposes of this ~~section,~~ subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the surviving family members of the victim.

(b) At the request of the victim or a family member of the victim, the Department of Correction shall prohibit an inmate convicted of an offense listed in G.S. 15A-830(7) from contacting the victim or family member of the victim. For purposes of this subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the victim or family member.

(c) The Department of Correction shall develop and impose sanctions against any inmate who violates the provisions of this section."

SECTION 10. Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-5.1. Confining inmates away from victims.**

If a victim or immediate family member of a victim requests that, for the safety of the victim or family member, an inmate be confined outside the county where the victim or family member resides or is employed, the Department shall make every effort to house the inmate in a facility in another county. If it is not possible to house the inmate in such a facility, the Department shall notify the victim or family member in writing and explain the reason for the Department's inability to comply with the request."

SECTION 11. This act becomes effective October 1, 2001.

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1154

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

H1154-ASA-18 [v.1]

Date April 24 ,2001

Comm. Sub. [YES]
Amends Title [NO]
H1154-CSLL-21

Representative Sutton

moves to amend the bill on page 6, line 24
by deleting,"time,".

Sutton
SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H1154-CSCL-21[v.4] DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sutton
Sen.)

moves to amend the bill on page 7, line 8

( ) WHICH CHANGES THE TITLE

by deleting "victim or family member of the victim."
and inserting "requesting party."

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1154 A BILL TO BE ENTITLED AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS 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 (#), ☐ 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 1154
PROPOSED COMMITTEE SUBSTITUTE H1154-PCS4164-SA-19

Short Title: Crime Victims' Rights Act Amendments. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' RIGHTS ACT AND TO OTHERWISE IMPROVE THE RIGHTS OF VICTIMS OF CRIME IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-830(a)(3) reads as rewritten:

"(3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Department of Correction."

SECTION 2. G.S. 15A-831 reads as rewritten:

"**§ 15A-831. Responsibilities of law enforcement agency.**

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) . Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, ~~and~~ telephone number, and any other identifying information associated with the case, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement ~~agency.~~ agency on the status of the accused during the pretrial process. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number."

SECTION 3. G.S. 15A-832 reads as rewritten:

"**§ 15A-832. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type ~~which~~ that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The form shall be included with the final judgment and ~~commitment~~ commitment, or judgment suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file. In the event that the form required by this subsection is not complete at the time of sentencing, the district attorney's office shall be responsible for submitting a copy of that form to the clerk of superior court and to the custodial agency within 10 business days or as soon as practicable."

SECTION 4. Article 46 of Chapter 15A of the General Statutes is amended by adding two new sections to read:

"**§ 15A-832.1. Responsibilities of judicial officials issuing arrest warrants.**

In issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(7)g., a judicial official shall record the victim's name, address, date of birth, social security number, race, sex, telephone number, and any other identifying information associated with the case on a form separate from the warrant and developed for the purpose of recording that information.

"**§ 15A-832.2. Responsibilities of the clerk of superior court.**

(a) When the identification form required by G.S. 15A-832(g) is included with the final judgment and commitment, or judgment suspending sentence, the clerk of superior court shall submit the form along with the final judgment and commitment to the custodial agency.

(b) In the event that restitution is ordered pursuant to Article 81C of this Chapter, upon the first payment of restitution to the victim from the clerk of superior court, the clerk shall provide the victim with written notice containing the following:

(1) The order of restitution.

(2) A reminder that the victim is responsible for notifying the district attorney's office and any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(3) The name and phone number of persons with the Division of Adult Probation and Parole and the Division of Prisons to contact in the event of nonpayment of restitution by the defendant."

SECTION 5. G.S. 15A-833 reads as rewritten:

"**§ 15A-833. Evidence of victim impact.**

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. A representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court at the victim's request."

SECTION 6. G.S. 15A-835 reads as rewritten:

"**§ 15A-835. Posttrial responsibilities.**

(a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the victim's name, address, ~~and~~ telephone ~~number.~~number, and any other identifying information associated with the case. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

~~(e) The Conference of District Attorneys shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.~~"

SECTION 7. G.S. 15A-836 reads as rewritten:

"**§ 15A-836. Responsibilities of agency with custody of defendant.**

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's

minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody, within 72 ~~hours.~~ hours, except that if a victim has notified the agency that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.

(5) The defendant's capture, within ~~72~~ 24 hours.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.

(7) The defendant's death.

(b) Notifications required in this section shall be provided within ~~30~~ 60 days of the date the custodial agency takes custody of the defendant or within ~~30~~ 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 8. G.S. 15A-837 reads as rewritten:

"**§ 15A-837. Responsibilities of Division of Adult Probation and Parole.**

(a) The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The ~~date~~ date and location of ~~a~~ any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant's absconding supervision, within 72 hours.

(7) The capture of a defendant described in subdivision (6) of this section, within 72 hours.

(8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section."

SECTION 9. G.S. 148-10.2 reads as rewritten:

"**§ 148-10.2. Policy: ~~Death row~~ Certain inmates not to contact family members of victims.**

(a) It shall be the policy of the Department of Correction to prohibit death row inmates from contacting the surviving family members of the victims without the written consent of the family members being contacted. For purposes of this ~~section,~~ subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the surviving family members of the victim.

(b) At the request of the victim or a family member of the victim, the Department of Correction shall prohibit an inmate convicted of an offense listed in G.S. 15A-830(7) from contacting the requesting party. For purposes of this subsection, the term "contact" includes arranging for a third party to forward communications from the inmate to the victim or family member.

(c) The Department of Correction shall develop and impose sanctions against any inmate who violates the provisions of this section."

SECTION 10. Article 1 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-5.1. Confining inmates away from victims.**

If a victim or immediate family member of a victim requests that, for the safety of the victim or family member, an inmate be confined outside the county where the victim or family member resides or is employed, the Department shall make every effort to house the inmate in a facility in another county. If it is not possible to house the inmate in such a facility, the Department shall notify the victim or family member in writing."

SECTION 11. This act becomes effective October 1, 2001.

ATTACHMENT IX

PCS offered April 18, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1217
PROPOSED COMMITTEE SUBSTITUTE H1217-CSSA-11 [v.3]

4/17/2001 9:00:01 PM

Short Title: Notify DWI Lienholders Immediately. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS AND INNOCENT MOTOR VEHICLE OWNERS WHEN A MOTOR VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.3(b) reads as rewritten:

"(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than ~~72~~ 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section.

SECTION 2. G.S. 20-28.3(b1) reads as rewritten:

"(b1) Notification of Impoundment. – Within ~~48~~ 24 hours of receipt within regular business hours of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. ~~This notice~~The notification of impoundment shall be sent by first-class mail to the most recent address

contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

SECTION 3. This act becomes effective January 1, 2002.

ATTACHMENT X

PCS - offered April 24, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H **D**

HOUSE BILL 1217
PROPOSED COMMITTEE SUBSTITUTE H1217-PCS3426-SA-17

Short Title: Notify DWI Lienholders Immediately. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS AND INNOCENT MOTOR VEHICLE OWNERS WHEN A MOTOR VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28.3(b) reads as rewritten:

"(b) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than ~~72~~ 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section."

SECTION 2. G.S. 20-28.3(b1) reads as rewritten:

"(b1) Written Notification of Impoundment. – Within 48 hours of receipt within regular business hours of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. ~~This notice~~The notification of impoundment shall be sent by first-class mail to the most

recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order."

SECTION 3. G.S. 20-28.3 is amended by adding a new subsection to read:

"(b2) Additional Notification to Lienholders. – In addition to providing written notification pursuant to subsection (b1) of this section, within four hours of receipt within regular business hours of the notice of seizure, the executive agency designated under subsection (b1) of this section shall notify by telephone any lienholder of record that has provided the executive agency with a designated telephone number for notification of impoundment. The verbal notification of impoundment shall state that the vehicle has been seized, state the reason for the seizure, and notify the lienholder of the additional written notification that will be provided pursuant to subsection (b1) of this section. The executive agency shall establish procedures to allow a lienholder to provide one designated telephone number for notification of impoundment for any vehicle for which the lienholder is a lienholder of record and shall maintain a centralized database of the provided telephone numbers. The lienholder must provide a telephone number at which the executive agency may leave a verbal notification of impoundment at any time."

SECTION 3. This act becomes effective December 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1217 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT LIENHOLDERS BE NOTIFIED IMMEDIATELY WHEN A MOTOR VEHICLE IS SUBJECT TO FORFEITURE FOR IMPAIRED DRIVING AFTER IMPAIRED DRIVING LICENSE REVOCATION.

☐ 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

a. For purposes of this subdivision "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

b. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

1. Litigation, to which the public body is a party, has been initiated formally.

2. A point has been reached where, in the opinion of the public body on the advice of its attorney, there is significant exposure to litigation against the public body.

3. The public body is meeting only to decide whether a closed session is authorized pursuant to sub-subdivision (3)b.2. of this subsection.

4. The public body has decided to initiate or is deciding whether to initiate litigation.

c. For purposes of this subdivision, a public body shall be considered to be a "party" or to have a "significant exposure to litigation" if a member or employee of the public body is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that person's office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

d. An attorney employed or retained by a public body who participates in a closed session for any purpose permitted by G.S. 143-318.11(a) shall prepare a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to G.S. 143-318.11(a)(3)b.1., the memorandum shall include the title of the existing litigation. If the closed session is for any other purpose permitted by this subsection, the memorandum shall include the existing facts and circumstances authorizing the closed session. The attorney shall prepare the memorandum before the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be made part of the account of the closed session required by G.S. 143-318.10(e) and, like the rest of the account, may be withheld from public inspection only so long as public inspection would frustrate the purpose of the closed session."

SECTION 2. This act becomes effective December 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1225
PROPOSED COMMITTEE SUBSTITUTE H1225-CSSG-5 [v.6]

4/24/2001 8:30:03 AM

Short Title: Open Meetings Pending Litigation. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT RELATING TO DISCUSSION OF PENDING LITIGATION IN CLOSED SESSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.11(a)(3) reads as rewritten:

"(3) To consult with an attorney employed or retained by the public body ~~in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.~~ regarding pending litigation, when discussion in open session concerning the pending litigation would prejudice the position of the public body in the litigation, or for any other purpose permitted by this subsection. General policy matters may not be discussed in ~~a~~ the closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to ~~an~~ its attorney concerning the handling or settlement of ~~a claim, judicial action, mediation, arbitration, or administrative procedure.~~ pending litigation. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. This subdivision does not abrogate the attorney-client privilege between a public body and an attorney employed or retained by the public body. Under no circumstances other than waiver of the privilege by the public body may an attorney employed or retained by the public body be made to disclose any information protected by the attorney-client privilege.

a. For purposes of this subdivision "litigation" means any adjudicatory proceeding, including a condemnation proceeding, before a court, administrative body exercising its adjudicatory authority, hearing officer, mediator or arbitrator.

b. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

1. Litigation, to which the public body is a party, has been initiated formally.

2. A point has been reached where, in the opinion of the public body on the advice of its attorney, there is significant exposure to litigation against the public body.

3. The public body is meeting only to decide whether a closed session is authorized pursuant to sub-subdivision (3)b.2. of this subsection.

4. The public body has decided to initiate or is deciding whether to initiate litigation.

c. For purposes of this subdivision, a public body shall be considered to be a "party" or to have a "significant exposure to litigation" if a member or employee of the public body is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that person's office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

SECTION 2. G.S. 143-318.11 is amended by adding a new subsection to read:

"(e) Memorandum Explaining Purpose of Closed Session. – Whenever a public body meets in a closed session for any purpose permitted by G.S. 143-318.11(a) the public body shall prepare a memorandum stating the specific reasons and legal authority for the closed session. If the public body meets in a closed session pursuant to G.S. 143-318.11(a)(3)b.1., the memorandum shall include the title of the existing litigation. If the closed session is for any other purpose permitted by this section, the memorandum shall include the existing facts and circumstances authorizing the closed session. The memorandum shall be prepared before the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be made part of the account of the closed session required by G.S. 143-318.10(e) and, like the rest of the account, may be withheld from public inspection only so long as public inspection would frustrate the purpose of the closed session."

SECTION 3. This act becomes effective December 1, 2001.

HOUSE BILL 1225:
Open Meetings Pending Litigation

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Nesbitt
Date:	April 24, 2001	**Summary by:**	Rick Zechini
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***The PCS for House Bill 1225 amends G.S. 143-318.11 to provide that a public body may meet in closed session to consult with an attorney employed by the public body to either discuss pending litigation or for any other purpose permitted by the Open Meetings Law (Article 33C of Chapter 143 of the General Statutes). An attorney employed by the public body who participates in a closed session must prepare a memorandum stating the specific reasons and legal authority for the closed session. This memorandum shall be made part of the account of the closed session. The bill is effective December 1, 2001.***

CURRENT LAW: Article 33C of Chapter 143 of the General Statutes requires that, subject to certain exceptions, each official meeting of a public body shall be open to the public. In general, the term "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. "Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.

G.S. 143-318.11(a)(3) is one of seven exceptions to the prohibition against closed meetings. It provides that a public body may meet in closed session to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.

BILL ANALYSIS: Section 1 of the PCS for House Bill 1125 amends G.S. 143-318.11(a)(3) to provide that a public body may meet in closed session to consult with an attorney employed or retained by the public body regarding pending litigation, when discussion in open session concerning the pending litigation would prejudice the position of the public body in the litigation, or for any other purpose permitted by the Open Meetings Law. "Litigation" is defined as any adjudicatory proceeding, including a condemnation proceeding, before a court, administrative body exercising its adjudicatory authority, hearing officer, mediator or arbitrator. The amended G.S. 143-318.11(a)(3) also provides that the subdivision does not abrogate the attorney-client privilege between a public body and an attorney employed or retained by a public body. Unless the public body waives the privilege, an attorney employed or retained by a public body may not disclose any information protected by the attorney-client privilege.

Section 2 of the bill adds a new subsection to G.S. 143-318.11 to provide that if the public body meets in closed session for any purpose the public body shall prepare a memorandum stating the specific reasons and legal authority for the closed session. The memorandum shall be prepared before the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be made part of the account of the closed session required by G.S. 143-318.10(e) and, like the rest of the account, may be withheld from public inspection only so long as public inspection would frustrate the purpose of the closed session. The bill is effective December 1, 2001.

House Judiciary I Committee

April 25, 2001

Minutes

The House Judiciary I Committee met on Wednesday, April 25, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blue, Blust, Gray, Insko, Nesbitt, Redwine, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Hill was recognized for an explanation of House Bill 218, AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL COMMODITIES OR PRODUCTION SYSTEMS, (Attachment III). He said that the bill would create an action in civil court for treble damages when an agricultural commodity or production system is willfully destroyed. He said that the bill resulted from problems that might arise regarding the destruction of products begin grown for research.

Mr. Rick Zechini, Committee Counsel, provided further explanation of the bill and a bill analysis is attached to the minutes, (Attachment IV).

Mr. David McLeod, Department of Agriculture, was recognized to comment on the bill. He said that the bill was modeled after a California bill regarding the destruction of biotech crops and that the bill would provide a deterrent to that type of activity.

Mr. Glenn Jernigan, representing the American Crop Protection Association, spoke in support of the bill.

Representative Sutton stated that, as written, the bill is not limited to commodities grown for research purposes, and that he would feel more comfortable if it were limited to research and development in the scientific community.

Chairman Hackney noted that the bill does not state to whom the damages are liable.

Representative Redwine offered an amendment, (Attachment V), and moved its adoption. The amendment was adopted.

Representative Redwine moved that the amendment be rolled into a new committee substitute, that the committee substitute be given a favorable report and the original bill an unfavorable report. The motion carried, (Attachment VI). A copy of the committee substitute is attached (Attachment VII).

Representative Nesbitt was recognized for further discussion of the proposed committee substitute for House Bill 383, AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR

NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION, (Attachment VIII). The bill was explained during the March 27, 2001 meeting of the committee and the proposed committee substitute was adopted for the purpose of discussion. He reminded the committee that during the previous session, the General Assembly raised the tort claims limit of the state from $150,000 to $500,000.

A bill analysis prepared by Mr. Frank Folger, Committee Counsel, is attached, (Attachment IX).

Representative Sutton moved for a favorable report for the proposed committee substitute. The motion carried, (Attachment X).

Representative Starnes was recognized for a continuation of the discussion of House Bill 793, AN ACT TO CREATE THE CRIMINAL OFFENSES OF INDECENT BEHAVIOR BETWEEN MINORS FOR THE PURPOSE OF PRODUCING INDECENT PHOTOGRAPHS OR OTHER ELECTRONIC VISUAL MATERIALS AND DISSEMINATION OF INDECENT MATERIALS BY MINORS. The bill was discussed during the 10:00 a.m. meeting on April 24, 2001. A proposed committee substitute was distributed, (Attachment XI).

Representative Alexander moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes made by the committee substitute. She said that it would still be a Class 3 misdemeanor for any minor who takes a photograph of another minor for the purpose of exploiting the minor by disseminating those photographs, or for any minor who actually does disseminate those photographs with that same intent of exploiting that minor by passing the nude photographs around. The violation was removed regarding the minor whom the photographs were taken. The parental consent language was also removed.

Discussion followed regarding the definition of "exploitation."

Representative Sutton moved for an unfavorable report. The motion failed.

Representative Insko said that the committee should explore the technical definition of the term "exploitation."

The bill was displaced.

Representative Eddins was recognized to explain House Bill 798, AN ACT TO PROVIDE CRIME VICTIMS WITH A CAUSE OF ACTION TO RECOVER PROFITS RECEIVED AS A RESULT OF THE CRIMES COMMITTED AGAINST THEM, (Attachment XII). A proposed committee substitute was distributed, (Attachment XIII). Representative Eddins said that the bill would create a "Son of Sam" or a norarity for profit law. It provides that all profits from a crime and all profits realized by profiteers of a crime shall be held in a constructive trust from which a victim of crime or other eligible person may petition to recover the profits.

A bill analysis prepared by Mr. Rick Zechini, Committee Counsel, provides further explanation and is attached to the minutes, (Attachment XIV).

Ms. Deborah Ross, American Civil Liberties Union, was recognized, and spoke in opposition to the bill.

It was decided by the members of the committee that the bill needed more work, but the crossover deadline was a consideration. In order to keep the bill eligible, Representative Gray offered an amendment, (Attachment XV), to add a filing fee of $50, and moved its adoption. The motion carried.

Representative Gray moved adoption of a new committee substitute incorporating the amendment. The motion carried and a committee substitute was adopted.

Chairman Hackney stated that a subcommittee would be appointed to study the bill further and requested that Representative Eddins give him suggestions for appointment to the subcommittee.

The committee returned to House Bill 793.

Representative Starnes was recognized to comment on the definition of "exploitation." He said that the definition that would apply is: taking unjust advantage of another for one's own advantage for benefit.

Representative Blust moved a favorable report for the proposed committee substitute. Following a voice vote of the committee, division was called. The motion carried, (Attachment XVI).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

WEDNESDAY, APRIL 25, 2001
10:00 A.M.

AGENDA

HOUSE BILL 218 – INJURY TO COMMODITIES OR PRODUCTION SYSTEMS
REPRESENTATIVE DEWEY HILL

HOUSE BILL 383 – LOCAL GOVERNMENT TORT LIABILITY
REPRESENTATIVE MARTIN NESBITT

HOUSE BILL 793 – INDECENT BEHAVIOR BETWEEN MINORS
REPRESENTATIVE EDGAR STARNES

HOUSE BILL 798 – NO PROFIT FROM CRIME
REPRESENTATIVE RICK EDDINS

HOUSE BILL 1012 – PHYSICIAN ASSISTED SUICIDE UNLAWFUL
REPRESENTATIVE MIA MORRIS

HOUSE BILL 1097 – SEX OFFENSES/AMEND PLEA BARGAIN LAWS
REPRESENTATIVE SAM ELLIS

HOUSE BILL 1351 – TWO STRIKES—YOU'RE OUT
REPRESENTATIVE MIKE HARRINGTON

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

April 25, 2001 10:00 am meeting — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDA+CS
[illegible]	American Crop Protection
[illegible]	NCABC
[illegible]	NC Com DA
Steve Woodson	NC Farm Bureau
Tiffany Barnes	Intern
Emily Fulghum	Smith Anderson
[illegible]	NCBTC
Jay Chaudhuri	DOJ
Allen Clapp	NCMS
Steve Keane	NCMS
Joanne Schoen Stevens	NC Nurses Association
Donna Pygott	NCVAN
Mat Osborne	AOC
DAVID BARNES	Poyner & Spruill
FRED TAYLOR	WRAL
Rebecca Lindstrom	UNC-TV
T Stanley	UNC TV
Rick Eder	Dist. 65
DAMICO	W-Salem Journal
DWEIGHT EISENHOWER	MILITARY/INDUSTRIAL COMPLEX
Greg McLeod	CCPS
John Cyrus	N.C. State Grange
Patricia A. Yarmey	LCRP + CCHIEC
Jere Royall	NC Family Policy Council

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 218

Committee Substitute Favorable 4/19/01

Short Title: Injury to Commodities or Production Systems. (Public)

Sponsors:

Referred to:

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL COMMODITIES OR PRODUCTION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-539.2B. Treble damages for injury to agricultural commodities or production systems; additional damages for certain agricultural commodities or production systems.**

(a) Any person who willfully injures or destroys any other person's agricultural commodities or production system is liable for three times the value of the commodities or production system injured or destroyed.

(b) For purposes of this section, the value of agricultural commodities that are grown for educational, testing, or research purposes includes all of the following:

(1) The diminution in market value of the commodities when the commodities were grown for sale and the plaintiff is the entity who sold the commodities or would have sold the commodities but for their injury or destruction.

(2) Costs to the plaintiff for research and development of the injured or destroyed commodities.

(3) Other incidental and consequential damages proven to have been incurred by the plaintiff.

(c) For the purpose of this section, the following definitions apply:

(1) 'Agricultural commodities' means commodities produced from the cultivation of soil or hydroponics or any other method of production for production of crops, including fruits, vegetables, flowers and ornamental plants, the planting and production of trees, timber, forests or forest products, and the raising of livestock and poultry and eggs,

for individual and public use, consumption, and marketing. The term 'agricultural commodities' also includes seed, genetic material, tissue cultures and any research and development materials, information, and records. Further, for the purposes of this section, aquaculture is considered a form of agriculture pursuant to G.S. 106-758.

(2) 'Production systems' means land, buildings, and equipment used in the production of agricultural commodities."

SECTION 2. This act becomes effective October 1, 2001, and applies to acts that occur on or after that date.

HOUSE BILL 218:
Injury to Commodities or Production Systems.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hill
Date:	April 25, 2001	**Summary by:**	Rick Zechini
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 218 would create an action in civil court for treble damages when agricultural commodities or production systems are willfully injured or destroyed, effective for acts on or after October 1, 2001.***

BILL ANALYSIS: The bill would create a civil cause of action for the collection of treble damages when any person willfully injures or destroys agricultural commodities or production systems.

An **"agricultural commodity"** is defined as commodities produced from the cultivation of soil or hydroponics or any other method of production for production of crops. The term specifically includes:

- Fruits, vegetables, flowers and ornamental plants.
- The planting and production of trees, timber, forests or forest products.
- The raising of livestock and poultry and eggs, for individual and public use, consumption and marketing.
- Seed, genetic material, tissue cultures and any research and development materials, information and records.
- Aquaculture.

The term **"production system"** means land, buildings, and equipment used in the production of agricultural commodities.

The value of agricultural crops or plants that are grown for educational, testing, or research purposes includes:

- The diminution in market value of the crops or plants, if the crop or plant was grown for sale and the plaintiff is the party who sold the crop or plant (or would have sold them but for the injury or destruction).
- Costs to the plaintiff for research and development of the injured or destroyed crop or plant.
- Other incidental and consequential damages proven to have been incurred by the plaintiff.

EFFECTIVE DATE: House Bill 218 would become effective October 1, 2001, and apply to acts that occur on or after than date.

R. Erika Churchill of the Research Division of the North Carolina General Assembly substantially contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. 2ND

H. B. No. _____ DATE 4/25/01

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) ~~Hackney~~ REDWINE
) _____
~~Sen.)~~

moves to amend the bill on page 1, line 12

( ) WHICH CHANGES THE TITLE

by INSERTING bit the words "who" and "willfully" the words "unlawfully and"

and on page 1, line 12, by inserting bit the words "liable" and "for" the words "to the owner".

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
H.B. 218 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL COMMODITIES OR PRODUCTION SYSTEMS.

☐ 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 (# 2), ☐ ~~which changes the title,~~ unfavorable as to ~~(original bill)~~ (Committee Substitute Bill # 1), ~~(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 218

Committee Substitute Favorable 4/19/01

PROPOSED COMMITTEE SUBSTITUTE H218-PCS5222-SG-11

Short Title: Injury to Commodities or Production Systems. (Public)

Sponsors:

Referred to:

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL COMMODITIES OR PRODUCTION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-539.2B. Treble damages for injury to agricultural commodities or production systems; additional damages for certain agricultural commodities or production systems.**

(a) Any person who unlawfully and willfully injures or destroys any other person's agricultural commodities or production system is liable to the owner for three times the value of the commodities or production system injured or destroyed.

(b) For purposes of this section, the value of agricultural commodities that are grown for educational, testing, or research purposes includes all of the following:

(1) The diminution in market value of the commodities when the commodities were grown for sale and the plaintiff is the entity who sold the commodities or would have sold the commodities but for their injury or destruction.

(2) Costs to the plaintiff for research and development of the injured or destroyed commodities.

(3) Other incidental and consequential damages proven to have been incurred by the plaintiff.

(c) For the purpose of this section, the following definitions apply:

(1) 'Agricultural commodities' means commodities produced from the cultivation of soil or hydroponics or any other method of production for production of crops, including fruits, vegetables, flowers and ornamental plants, the planting and production of trees, timber, forests

or forest products, and the raising of livestock and poultry and eggs, for individual and public use, consumption, and marketing. The term 'agricultural commodities' also includes seed, genetic material, tissue cultures and any research and development materials, information, and records. Further, for the purposes of this section, aquaculture is considered a form of agriculture pursuant to G.S. 106-758.

(2) 'Production systems' means land, buildings, and equipment used in the production of agricultural commodities."

SECTION 2. This act becomes effective October 1, 2001, and applies to acts that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 383*
PROPOSED COMMITTEE SUBSTITUTE H383-CSSO-4 [v.2]

3/26/2001 4:19:50 PM

Short Title: Local Government Tort Liability. (Public)

Sponsors:

Referred to:

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-435 reads as rewritten:

"**§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.**

(a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental ~~immunity,~~ immunity from the first dollar of damages up to the extent of insurance ~~coverage,~~ coverage or to the extent waived by the adoption of a resolution creating a funded reserve under this subsection, for any act or omission occurring in the exercise of a governmental function. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

If a county uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the county or

any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the county shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the county's governmental immunity only to the extent specified in the commission's resolution.

(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, and to the extent provided by resolution adopted pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance or the adoption of a resolution as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

(c) Nothing in this section shall apply to any claim in tort against a county for which the county is not immune from liability under the statutes or common law of this State."

SECTION 2. G.S. 160A-485 reads as rewritten:

"**§ 160A-485. Waiver of immunity through insurance purchase.**

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived ~~only to the~~ from the first dollar of damages up to the extent that the city is indemnified by the insurance contract from tort ~~liability.~~ liability or to the extent waived by the adoption of a resolution creating a funded reserve. No formal action other than the purchase of liability insurance shall be required to waive tort ~~immunity, and no~~ immunity. No city shall be deemed to have waived its tort immunity by any action other than the purchase of liability ~~insurance.~~ insurance or the adoption of a resolution creating a funded reserve under this subsection.

If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the

course of their employment, the city shall adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance

coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State."

SECTION 3. Chapter 980 of the 1987 Session Laws is repealed.

SECTION 4. Section 2 of S.L. 1998-200 is repealed.

SECTION 5. This act becomes effective October 1, 2001, and applies to causes of action arising on or after that date.

HOUSE BILL 383:
Local Government Tort Liability Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Nesbitt
Date:	March 27, 2001	**Summary by:**	Frank W. Folger
Version:	H383-CSSO-4[v.2]		Committee Counsel

SUMMARY: ***This bill would allow local governments to waive immunity for negligence liability by the adoption of a funded reserve and clarify that any waiver of immunity is from the first dollar of damages.***

CURRENT LAW: Under the current law, local governments are authorized but not required to purchase insurance. The purchase of liability insurance waives a local government's immunity for negligence arising out of the exercise of a governmental function. Since local governments are not required to purchase insurance, some counties and cities use other types of coverage mechanisms to pay for tort claims, including self-funded reserves. However, not all types of coverage mechanisms constitute insurance for purposes of waiving immunity. Currently, the only types of coverage that constitute insurance for purposes of waiving immunity are (1) liability coverage by a company licensed to execute insurance in North Carolina, or private insurance, and (2) a local government risk pool where the risk is shared by two or more local governments. Additionally, the purchase of insurance waives immunity only to the extent of insurance coverage. For example, a local government may opt to have liability coverage for claims that exceed $2 million but are less than $4 million. In this instance, the local government has not waived its immunity for any claims where the damages are less than $2 million.

BILL ANALYSIS: This bill would make two substantive changes that apply to both counties and cities.

Section 1. amends N.C.G.S. §153A-435 applicable to counties. 1) It would require a county that uses a self-funded reserve to cover its liability to adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance for purposes of waiving governmental immunity. This would waive governmental immunity of any county that uses a self-funded reserve for payment of claims but only to the extent specified in the resolution. 2) It would clarify that purchase of insurance by a county waives its governmental immunity from the first dollar of damages up to the extent of insurance coverage or to the extent specified in the resolution creating the funded reserve. For counties with private insurance, the effect of this provision is to require payment of claims from the first dollar of damages regardless of minimum policy limits, but in no event would their liability exceed maximum policy limits.

Section 2. amends N.C.G.S. §160A-485 applicable to cities and towns and makes the same substantive changes as in Section 1.

Section 3. would repeal Chapter 980 of the 1987 Session Laws, the local act which allows Mecklenburg and Catawba Counties to use self-funded reserves.

Section 4. would repeal S.L. 1998-200, the local act which allows the city of Raleigh to use a self-funded reserve.

Section 5. This act would become effective on October 1, 2001 and would apply to causes of action arising on or after that date.

BACKGROUND: This bill was recommended by the 1999-2000 LRC Study Committee on State Tort Liability and Immunity in its report to the 2001 General Assembly. That same committee recommended legislation to raise the maximum recovery allowed for tort claims against the State from $150,000 to $500,000, which was enacted into law in Section 7A of S.L. 2000-1840. That committee took up the issue of local government tort liability in the interim between the 2000 Session and the 2001 Session, held four meetings on the issue, and heard testimony from the Institute of Government, the North Carolina League of Municipalities, the North Carolina County Commissioners' Association, the North Carolina Academy of Trial Lawyers, and county and city representatives, among other parties.

Trina Griffin, co-counsel to the LRC Committee on State Tort Liability and Immunity, contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 383 A BILL TO BE ENTITLED AN ACT TO ALLOW LOCAL GOVERNMENTS TO WAIVE IMMUNITY FOR NEGLIGENCE LIABILITY BY THE ADOPTION OF A FUNDED RESERVE AND TO CLARIFY THAT ANY WAIVER OF IMMUNITY IS FROM THE FIRST DOLLAR OF DAMAGES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 793
PROPOSED COMMITTEE SUBSTITUTE H793-PCS2255-SA-20

Short Title: Indecent Behavior & Photography Between Minors. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSES OF INDECENT BEHAVIOR BETWEEN MINORS FOR THE PURPOSE OF PRODUCING INDECENT PHOTOGRAPHS OR OTHER ELECTRONIC VISUAL MATERIALS AND DISSEMINATION OF INDECENT MATERIALS BY MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-190.21. Indecent behavior between minors to produce indecent visual materials; dissemination of indecent visual material by minors.**

(a) It is a Class 3 misdemeanor for any minor to willfully photograph, videotape, or use any other electronic visual medium to produce a photograph, videotape, computer image, or other electronic visual image that fully exposes the private parts of another minor for the purpose of exploiting the minor by disseminating the photograph, videotape, computer image, or other electronic visual image.

(b) It is a Class 3 misdemeanor for any minor to willfully disseminate a photograph, videotape, computer image, or other electronic visual image obtained in violation of subsection (a) of this section for the purpose of exploiting the minor."

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 1

HOUSE BILL 798

Short Title: No Profit from Crime. (Public)

Sponsors: Representatives Eddins; Davis, Hilton, Cox, Capps, and Shubert.

Referred to: Judiciary I.

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIME VICTIMS WITH A CAUSE OF ACTION TO RECOVER PROFITS RECEIVED AS A RESULT OF THE CRIMES COMMITTED AGAINST THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-26 Profit received as a result of commission of a crime.**

(a) The General Assembly finds that the State has a compelling interest in:

(1) Ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them; and

(2) Protecting crime victims and their families from the additional grief and suffering that may result from renewed publicity about an offender's crime or the marketing or sale of memorabilia related to the crime.

The General Assembly further finds that these compelling interests outweigh any interest of the offender and that person's representatives may have in obtaining property or otherwise profiting as a result of having committed a crime. The General Assembly also finds that these compelling interests outweigh a third party's right to realize profits from the sale of crime memorabilia, to the extent that those profits would not have been realized were it not for the commission of the crime.

(b) Definitions. – As used in this section:

(1) 'Convicted' includes persons convicted by entry of a plea of guilty or no contest, persons convicted after trial, and persons found not guilty by reason of insanity.

(2) 'Eligible person' includes any of the following persons:

a. A victim of the particular crime in question as defined in G.S. 15B-2(13);
b. A surviving spouse, parent, or child of a deceased victim of the crime; or
c. Any other person dependent for the person's principal support upon a deceased victim of the crime.

However, 'eligible person' does not include the offender who committed the criminally injurious conduct or an accomplice to that offender.

(3) 'Profit from a crime' includes:
a. Any property obtained through, or income generated from, the commission of a crime for which the offender was convicted;
b. Any property obtained by, or income generated from, the sale, conversion, or exchange of proceeds of a crime for which the offender was convicted, including any gain realized by that sale, conversion, or exchange; and
c. Any property that the offender obtained, or income generated, as a result of the offender having committed the crime for which the offender was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for, the commission of the crime, as well as any property obtained by, or income generated from, the sale, conversion, or exchange of that property and any gain realized by that sale, conversion, or exchange.

(4) 'Profiteer of the crime' means any person who sells or transfers for profit any memorabilia or other property or thing of the offender, the value of which is enhanced by the notoriety gained from the commission of the crime for which the offender was convicted. 'Profiteer of the crime' shall not include a media entity reporting on the offender or on the sale of memorabilia or other property of the offender, nor shall it include a person selling books, magazines, newspapers, films, or sound recordings, or giving interviews or making live presentations of any type, in the exercise of that person's rights under the First Amendment to the United States Constitution. 'Profiteer of the crime' shall also not include a person selling or transferring any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

(c) Notice of Profit From Crime. – If a person has been convicted of a crime, any person who knowingly contracts for, pays, or agrees to pay any profit from a crime to that person shall give written notice to the Commission of the payment or obligation to pay within 30 days after discovering that the payment or intended payment is a profit from a crime, and submit a copy of any contract or other agreement giving rise to the profit from crime. The Commission, upon receipt of notice of a contract, an agreement

to pay, or payment of profit from a crime, shall notify all known eligible persons of the existence of the profit.

(d) Constructive Trust; Right of Action. – All profits from crime shall be subject to a constructive trust for the benefit of eligible persons. An eligible person may bring an action to recover those profits from a person convicted of a crime, the legal representative of that convicted person, a profiteer of the crime, or a person to whom profits of crime have been transferred, within three years of the discovery of any profit from the crime. The court may award an eligible person bringing such an action a judgment of an amount up to the total value of the profit from the crime. If any profit from crime remains after the payment of all claims made under this section, the Commission may bring an action within two years to recover any compensation awards made by the Commission as a result of the crime in question.

(e) Notice of Action. – Upon filing an action under subsection (d) of this section, an eligible person shall give notice to the Commission of the filing by delivering a copy of the complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action in order to allow the Commission to apply for any appropriate remedies that are otherwise authorized to be invoked prior to commencement of an action.

(f) Responsibilities of the Commission. – Upon receipt of a copy of a complaint, the Commission shall immediately take action as necessary to:

(1) Notify all other known eligible persons of the alleged existence of profit from a crime by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission;

(2) Publish, at least once a year for three years from the date it is initially notified by an eligible person under subsection (e) of this section, a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to that county advising any eligible person of the existence of profit from a crime. The Commission may, in its discretion, provide for additional notice as it deems necessary; and

(3) Avoid the wasting of the assets identified in the complaint as the newly discovered profit from a crime in any manner consistent with subsection (g) of this section.

(g) Other Remedies. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all remedies that are also otherwise available to an eligible person bringing an action under subsection (d) of this section, such as attachment, injunction, and receivership. On a motion for a remedy, the moving party shall state whether any other remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(h) Evasive Action Void. – Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or

otherwise, to defeat the purpose of this section shall be void as against the public policy of this State.

(i) Penalties. – Any person who willfully fails to do any of the following is subject to a civil penalty of not less than ten thousand dollars ($10,000) for each offense and not more than an amount equal to three times the contract amount:

(1) Give notice to the Commission of a profit from crime within 30 days as required by subsection (c) of this section;

(2) Submit a copy of the contract or other agreement described in subsection (c) of this section; or

(3) Pay over to the Commission any funds or other consideration as required by this section.

If two or more persons are subject to the penalties provided in this section, the persons shall be jointly and severally liable for the payment of the penalty imposed.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of one percent (1%) per month, compounded monthly. An action to recover a civil penalty assessed under this section may be brought by the Commission within six years after the cause of action accrues.

The clear proceeds of penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act is effective when it becomes law and applies to profits from crime realized on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 798
PROPOSED COMMITTEE SUBSTITUTE H798-CSLL-23 [v.7]

4/24/2001 1:59:40 PM

Short Title: No Profit from Crime. (Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIME VICTIMS WITH A CAUSE OF ACTION TO RECOVER PROFITS RECEIVED AS A RESULT OF THE CRIMES COMMITTED AGAINST THEM.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-26 Profit received as a result of commission of a crime.**

(a) The General Assembly finds that the State has a compelling interest in:

(1) Ensuring that persons convicted of crimes do not profit from those crimes, and that victims of crime are compensated by those who have harmed them; and

(2) Protecting crime victims and their families from the additional grief and suffering that may result from renewed publicity about an offender's crime or the marketing or sale of memorabilia related to the crime.

The General Assembly further finds that these compelling interests outweigh any interest of the offender and the offender's representatives may have in obtaining property or otherwise profiting as a result of having committed a crime. The General Assembly also finds that these compelling interests outweigh a third party's right to realize profits from the sale of crime memorabilia, to the extent that those profits would not have been realized were it not for the commission of the crime.

(b) Definitions. – As used in this section:

(1) 'Convicted' includes persons convicted by entry of a plea of guilty or no contest, persons convicted after trial, and persons found not guilty by reason of insanity.

(2) 'Eligible person' includes any of the following persons:

a. A victim of the particular crime in question as defined in G.S. 15B-2(13);

b. A surviving spouse, parent, or child of a deceased victim of the crime; or

c. Any other person dependent for the person's principal support upon a deceased victim of the crime.

However, 'eligible person' does not include the offender who committed the criminally injurious conduct or an accomplice to that offender.

(3) 'Profit from a crime' includes:

a. Any property obtained through, or income generated from, the commission of a crime for which the offender was convicted;

b. Any property obtained by, or income generated from, the sale, conversion, or exchange of proceeds of a crime for which the offender was convicted, including any gain realized by that sale, conversion, or exchange; and

c. Any property that the offender obtained, or income generated, as a result of the offender having committed the crime for which the offender was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for, the commission of the crime, as well as any property obtained by, or income generated from, the sale, conversion, or exchange of that property and any gain realized by that sale, conversion, or exchange.

(4) 'Profiteer of a crime' means any person who sells or transfers for profit any memorabilia or other property or thing of the offender, the value of which is enhanced by the notoriety gained from the commission of the crime for which the offender was convicted. 'Profiteer of the crime' shall not include a media entity reporting on the offender or on the sale of memorabilia or other property of the offender, nor shall it include a person selling books, magazines, newspapers, films, or sound recordings, or giving interviews or making live presentations of any type, in the exercise of that person's rights under the First Amendment to the United States Constitution. 'Profiteer of the crime' shall also not include a person selling or transferring any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

(c) Notice of Profit From Crime. – If a person has been convicted of a crime, any person who knowingly contracts for, pays, or agrees to pay any profit from a crime to that person, and any profiteer of that crime, shall give written notice to the Commission of the payment or obligation to pay within 30 days after discovering that the payment or intended payment is a profit from a crime or that the person is a profiteer of the crime, and submit a copy of any contract or other agreement giving rise to the profit from the crime or the profit realized by the profiteer of the crime. The Commission, upon receipt

of notice of a contract, an agreement to pay, or payment of profit from a crime, or that a person is a profiteer of a crime, shall notify all known eligible persons of the existence of the profit.

(d) Constructive Trust; Right of Action. – All profits from crime and profits realized by profiteers of a crime shall be subject to a constructive trust for the benefit of eligible persons. An eligible person may bring an action:

(1) To recover profits from a crime from a person convicted of a crime, the legal representative of that convicted person, or a person to whom profits of crime have been transferred, within three years of the discovery of any profit from the crime. The court may award an eligible person bringing such an action a judgment of an amount up to the total value of the profit from the crime.

(2) To recover profits realized from a profiteer of the crime within three years of the discovery of the profit from the crime. The court may award an eligible person bringing such an action a judgment of an amount up to the total value by which the sale or transfer was enhanced by the notoriety gained from the commission of the offense for which the offender was convicted.

If any profit from crime or profit realized by a profiteer of the crime remains after the payment of all awards made by the court under this section, the Commission may bring an action within two years of the final payment to recover any compensation awards previously made by the Commission as a result of the crime in question.

(e) Notice of Action. – Upon filing an action under subsection (d) of this section, an eligible person shall give notice to the Commission of the filing by delivering a copy of the complaint to the Commission. The eligible person may also give notice to the Commission prior to filing the action in order to allow the Commission to apply for any appropriate remedies that are otherwise authorized to be invoked prior to commencement of an action.

(f) Responsibilities of the Commission. – Upon receipt of a copy of a complaint, the Commission shall immediately take action as necessary to:

(1) Notify all other known eligible persons of the alleged existence of profit from a crime or profit realized by a profiteer of crime by certified mail, return receipt requested, where the eligible persons' names and addresses are known to the Commission;

(2) Publish, at least once a year for three years from the date it is initially notified by an eligible person under subsection (e) of this section, a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to that county advising any eligible person of the existence of profit from a crime or profit realized by a profiteer of crime. The Commission may, in its discretion, provide for additional notice as it deems necessary; and

(3) Avoid the wasting of the assets identified in the complaint as the newly discovered profit from a crime or profit realized by a profiteer of a crime in any manner consistent with subsection (g) of this section.

(g) Other Remedies. – The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all remedies that are also otherwise available to an eligible person bringing an action under subsection (d) of this section, such as attachment, injunction, and receivership. On a motion for a remedy, the moving party shall state whether any other remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(h) Evasive Action Void. – Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section shall be void as against the public policy of this State.

(i) Penalties. – Any person who willfully fails to do any of the following is subject to a civil penalty of not less than ten thousand dollars ($10,000) for each offense and not more than an amount equal to three times the contract amount:

(1) Give notice to the Commission of profit from a crime or profit realized by a profiteer of crime within 30 days as required by subsection (c) of this section;

(2) Submit a copy of the contract or other agreement described in subsection (c) of this section; or

(3) Pay over to the Commission any funds or other consideration as required by this section.

If two or more persons are subject to the penalties provided in this section, the persons shall be jointly and severally liable for the payment of the penalty imposed.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of one percent (1%) per month, compounded monthly. An action to recover a civil penalty assessed under this section may be brought by the Commission within six years after the cause of action accrues.

The clear proceeds of penalties assessed under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act is effective when it becomes law and applies to profits realized on or after that date.

HOUSE BILL 798:
No Profit From Crime

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Eddins
Date:	April 25, 2001	**Summary by:**	Rick Zechini
Version:	Proposed Committe Substitute		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 798 provides that all profits from a crime and all profits realized by profiteers of a crime shall be held in a constructive trust from which a victim of crime or other eligible person may petition to recover the profits.***

CURRENT LAW: North Carolina law provides that convicted criminals may be required to provide restitution to their victims for items such as the value of property stolen or the amount of medical bills. In addition, the Crime Victims Compensation Fund was established by the General Assembly to provide compensation to the victims of crime. The amount of compensation under the Crime Victims Compensation Fund is capped at $30,000 in addition to allowable funeral, cremation, and burial expenses. North Carolina law does not provide a mechanism for the recovery of the profits that criminal offenders obtain through such things as the sale of book and movie rights or that anyone obtains through the sale of memorabilia of the criminal offender.

BILL ANALYSIS: The PCS for House Bill 798 provides that all profits from a crime and all profits realized by profiteers of a crime shall be held in a constructive trust from which an eligible person (a victim of crime, a surviving spouse, parent, or child of a deceased victim of crime, or a person whose support is provided for by the victim of crime) may petition to recover the profits. An eligible person has three years from the discovery of any profit from the crime to bring an action seeking to recover the profits. "Profit from a crime" includes:

- Any property obtained through, or income generated from, the commission of a crime for which the offender was convicted;
- Any property obtained by, or income generated from, the sale, conversion, or exchange of proceeds of a crime for which the offender was convicted, including any gain realized by that sale, conversion, or exchange; and
- Any property that the offender obtained, or income generated, as a result of the offender having committed the crime for which the offender was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for, the commission of the crime, as well as any property obtained by, or income generated from, the sale, conversion, or exchange of that property and any gain realized by that sale, conversion, or exchange.

"Profiteer of a crime" means any person who sells or transfers for profit any memorabilia or other property or thing of the offender, the value of which is enhanced by the notoriety gained from the commission of the crime for which the offender was convicted. "Profiteer of the crime" does not include a media entity reporting on the offender or on the sale of memorabilia or other property of the offender, nor does it include a person selling books, magazines, newspapers, films, or sound recordings, or giving interviews or making live presentations of any type, in the exercise of that person's rights under the First Amendment to the United States Constitution. "Profiteer of the crime" does also not include a person selling or transferring any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

The court may award an eligible person an amount up to the total value of the profit from the crime, or in the case of a profiteer of the crime an amount up to the total value by which the sale or transfer was enhanced by the notoriety gained from the commission of the offense for which the offender was convicted. If any profit from crime or profit realized by a profiteer of the crime remains after the payment of all awards made by the court under this section, the Crime Victims Compensation Commission (Commission) may bring an action within two years of the final payment to recover any compensation awards (i.e., compensation awarded to the victims of crime from the Crime Victims Compensation Fund) previously made by the Commission as a result of the crime in question.

If a person has been convicted of a crime, any person who knowingly contracts for, pays, or agrees to pay any profit from a crime to that person, and any profiteer of that crime, shall give written notice to the Commission of the payment or obligation to pay within 30 days after discovering that the payment or intended payment is a profit from a crime or that the person is a profiteer of the crime, and submit a copy of any contract or other agreement giving rise to the profit from the crime or the profit realized by the profiteer of the crime. The Commission, upon receipt of notice of a contract, an agreement to pay, or payment of profit from a crime, or that a person is a profiteer of a crime, shall notify all known eligible persons of the existence of the profit. The Commission, acting on behalf of all eligible persons, shall have the right to apply for any and all remedies that are also otherwise available to an eligible person, such as attachment, injunction, and receivership.

Any person who willfully fails to do any of the following is subject to a civil penalty of not less than ten thousand dollars ($10,000) for each offense and not more than an amount equal to three times the contract amount:

- Give notice to the Commission of profit from a crime or profit realized by a profiteer of crime within 30 days.
- Submit a copy of the contract or other agreement giving rise to the profit from the crime or the profit realized by the profiteer of the crime
- Pay over to the Commission any required funds or consideration.

If two or more persons are subject to the penalties, the persons shall be jointly and severally liable for the payment of the penalty imposed.

After providing notice and opportunity to be heard, the Commission may by order assess the penalties prescribed by this subsection. If the penalties are not paid within 30 days from the date of the order, any penalty assessed shall bear interest at the rate of one percent (1%) per month, compounded monthly. An action to recover a civil penalty may be brought by the Commission within six years after the cause of action accrues. The clear proceeds of penalties assessed shall be remitted to the Civil Penalty and Forfeiture Fund.

The act is effective when it becomes law and applies to profits realized on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XV**

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 798 DATE 4/25/01

~~S. B. No.~~ _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) ~~Nesbitt~~ GRAY
) _____
~~Sen.~~)

1 moves to amend the bill on page 3, line 25

2 ( ) WHICH CHANGES THE TITLE

3 by Inserts after the word "commissioners" the

4 words " and payment of a filing fee of

5 fifty dollars ($50.00).

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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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 793 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSES OF INDECENT BEHAVIOR BETWEEN MINORS FOR THE PURPOSE OF PRODUCING INDECENT PHOTOGRAPHS OR OTHER ELECTRONIC VISUAL MATERIALS AND DISSEMINATION OF INDECENT MATERIALS BY MINORS.

☐ 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 Judiciary I Committee

May 1, 2001

Minutes

The House Judiciary I Committee met on Tuesday May 1, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Nesbitt, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Tony Rand was recognized to explain Senate Bill 262, AN ACT TO PROVIDE THAT A PERSON IMPROPERLY CHARGED WITH A CRIMINAL OFFENSE AS A RESULT OF IDENTITY FRAUD MAY HAVE HIS OR HER RECORD EXPUNGED, (Attachment III). Senator Rand said that under current law, one may have only one conviction expunged. He said that a number of problems had arisen regarding identity fraud. The bill would allow a person charged with a crime due to another person's use of his or her identifying information to apply to court for an expunction order after the charge has been dismissed or a finding of not guilty has been entered.

A bill analysis prepared by Ms. Susan Sitze, Committee Counsel, gives further details of the bill, (Attachment IV). A copy of the current expunction statute was also distributed, (Attachment V).

Senator Rand stated that several technical amendments had been prepared for the bill.

Representative Nesbitt offered the first amendment, (Attachment VI), and moved its adoption. The amendment was a clarifying change to make it clear that what the insurance would have to refund would be additional premium charge and not the entire premium.

The amendment was adopted.

Representative Nesbitt offered a second amendment, (Attachment VII), and moved its adoption. The amendment that would delete "a crime" and add "an infraction or crime" to line 12 on page 1was adopted.

A third amendment was offered by Representative Nesbitt, (Attachment VIII), who moved adoption. The technical amendment would insert the word "shall" instead of "may" on page 1, line 26 of the bill. The motion carried.

Representative Nesbitt offered a fourth amendment and moved its adoption, (Attachment IX). Ms. Sitze said that the amendment would allow the conviction, as well as the charge to be expunged in a situation where someone happened to be convicted of an offense before it was shown that someone else had committed the crime under their name.

The amendment was adopted.

Representative Nesbitt asked if the bill had been crossed with the existing statute to insure an expunction allowed under this bill would not count as the first expunction.

The bill was displaced to allow for the drafting of an amendment to address Representative Nesbitt's concern.

Senator Ballance was recognized for a discussion of Senate Bill 173, AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, (Attachment X). Chairman Hackney reminded the committee that the identical House version of the bill had previously been before the committee and that a public hearing had been held. (The bill, House Bill 141, was explained during the March 20, 2001 meeting of the committee). He said that the Senate version had passed in a substantially different form.

Senator Ballance said that the bill now requires that murder defendants claiming to be mentally retarded must have had an IQ test administered prior to the commission of the crime for which the defendant is being tried. This provision would eliminate the concern that one could manipulate an IQ test when administered following the commission of a crime.

The bill analysis, prepared by Ms. Sitze, is attached, (Attachment XI).

Chairman Hackney noted that the Senate had added language that would allow district attorneys to decide which homicides to seek the death penalty for, giving them more discretion than they currently have.

Senator Ballance said that the language was added by a floor amendment, and that the committee may wish to delete the language.

Ms. Sitze was recognized to explain the differences in the House and Senate bill. She pointed out the district attorney discretion language, the requirement that the IQ test must have been administered prior to the commission of the alleged crime, and the addition of an appeal of right to the Court of Appeals, for both the state and the defendant (page 2, lines 4-12).

Representative Blue asked if it is constitutional to provide in law that the IQ test must have been administered prior to the commission of the alleged crime.

Representative Insko noted that there is a possibility that test results could be lost over time, and questioned if there was a provision in the bill to address such situations.

Senator Ballance replied that the language was fairly clear that one would have to have the results.

Chairman Hackney asked if a person could be found to be mentally retarded under this bill without a test.

Ms. Sitze said that the only way mental retardation could be proved under the bill is with a test administered prior to the crime.

Representative Arnold requested that a representative from the Office of the Attorney General comment on the bill.

A representative from the Office of the Attorney General said that the only position the office has taken is their concern as to what the fiscal impact would be with regard to the appellate process.

Chairman Hackney asked if there was a fiscal note for the bill. Senator Ballance said that there was one, but that it is being updated.

Considerable discussion followed regarding the IQ testing.

Representative Insko asked if there were any other research-based measure besides an IQ test that determines mental retardation and if traumatic injury could result in impaired mental functioning.

Dr. Andrew Short said that the IQ test is essential to the diagnosis of mental retardation. He said that traumatic brain injury technically can produce mental retardation.

The committee returned to Senate Bill 262.

Representative Blue offered an amendment, (Attachment XII), and moved its adoption. The amendment adds language to specifically limit the "no previous expungement" language to address the concern raised by Representative Nesbitt earlier in the meeting.

The amendment was adopted.

Representative Blue moved to incorporate the amendments into a new House committee substitute, that the committee substitute be given a favorable report, and the Senate committee substitute and unfavorable report. The motion carried, (Attachment XIII). A copy of the House Committee Substitute is attached, (Attachment XIV).

Representative Sutton requested that staff prepare an amendment to remove Sections 2, 3, and 4 from the No Death Penalty/Mentally Retarded bill.

The meeting was adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MAY 1, 2001
10:00 A.M.

AGENDA

SENATE BILL 173 – NO DEATH PENALTY/MENTALLY RETARDED
SENATOR FRANK BALLANCE

SENATE BILL 262 – EXPUNGE IMPROPER CRIMINAL CHARGE/IDENTITY FRAUD
SENATOR TONY RAND

SENATE BILL 310 – UNIFORM SECURITIES REGULATION
SENATOR DAVID HOYLE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 1, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Catarina Gonzalez	NCSU
Carole Lawler	EGHS
Wadleigh S. Clark	Robeson County Commissioner
Jack Meeker	MoBDE
Hal Miller	NCACCT
Margaret Westbrook	Kennedy Covington
ALLAN HEAD	N.C. Bar Assoc.
JIM MAXWELL	N.C. BAR Assoc.
Tye Hunter	Indigent Defense Services
A.A. Adams	Victim Advocate

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 262
Judiciary I Committee Substitute Adopted 4/18/01

Short Title: Expunge Improper Crim. Charge/Identity Fraud. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON IMPROPERLY CHARGED WITH A CRIMINAL OFFENSE AS A RESULT OF IDENTITY FRAUD MAY HAVE HIS OR HER RECORD EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A is amended by adding a new section to read:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity fraud.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person to commit a crime and the charge against the named person is dismissed, or a finding of not guilty is entered, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court may also order that the said entries shall be expunged from the records of the court, and direct all law enforcement agencies, the Division of Motor

Vehicles or any other State or local government agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those premiums to the policyholder upon notification of the expungement."

SECTION 2. This act becomes effective October 1, 2001, and applies to charges filed before, on, or after the effective date.

ATTACHMENT IV

SENATE BILL 262:
Expunge Improper Crim. Charge/Identity Fraud

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 1, 2001	**Summary by:**	Susan L. Sitze, Committee Counsel
Version:	2nd Edition		

SUMMARY: ***Senate Bill 262 allows a person who has been charged with a crime due to another's use of his or her identifying information to seek an expunction order from a court after the charges have been dismissed or a finding of not guilty has been entered.***

CURRENT LAW: In 1999, G.S. 14-113.20 *et seq.* was enacted to make the fraudulent obtaining, possession, or use of another person's identifying financial information a felony with potential civil liabilities.

The general expunction statute, G.S. 15A-146, allows any person charged with a misdemeanor or felony who is not convicted or the charges are dismissed, to petition to have the criminal record expunged provided the person has not previously had charges or convictions expunged. This statute was amended in 1997 to also apply to persons, ages 19 or 20, charged with an infraction for underage possession of alcohol. The statute requires that the petitioner pay the costs of records expunction.

BILL ANALYSIS: This bill allows persons charged with a crime due to another person's use of his or her identifying information to apply to court for an expunction order after the charge has been dismissed or a finding of not guilty has been entered. A person whose record is expunged is not legally required to acknowledge the charge or conviction.

The bill also directs that all records of the courts, law enforcement, DMV or other State and local government agencies be expunged. The DMV and other State and local government agencies are also directed to reverse any administrative action taken as a result of the charges or convictions that are expunged at no cost to the victim. Any insurance company that charged additional premiums as a result of the charges or convictions expunged are to refund these additional premiums.

EFFECTIVE DATE: The bill becomes effective October 1, 2001 and applies to charges filed before, on or after the effective date.

This summary was modified from a summary originally drafted by O. Walker Reagan.

§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging such records shall be taxed against the petitioner.

(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement.

(1979, c. 61; 1985, c. 636, ss. 1-7; 1991, c. 326, s. 1; 1997-138, s. 1; 1999-406, s. 9.)

Editor's Note. - Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Effect of Amendments. - Session Laws 1999-406, s. 9, effective December 1, 1999, and applicable to offenses committed on or after that date, in the first sentence of subsection (a), substituted "was charged" for "is charged" and inserted "prior to December 1, 1999".

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CASE NOTES

Cited in Bates v. City of Gastonia, 653 F. Supp. 960 (W.D.N.C. 1987); Eury v. North Carolina Emp. Sec. Comm'n, 115 N.C. App. 590, 446 S.E.2d 383, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994).

OPINIONS OF ATTORNEY GENERAL

Expungement of Multiple Offenses. - Where a person is charged or convicted of several misdemeanor offenses, and the charges are not consolidated for trial and judgment, nor arise from the same transaction or occurrence, the court may not order an expungement of the multiple offenses pursuant to § 15A-145 and this section. See opinion of Attorney General to James J. Coman, Director, State Bureau of Investigation, - N.C.A.G. - (January 3, 1996).

An expungement should only be allowed for a singular offense and not for multiple offenses occurring over a period of time. See opinion of Attorney General to James J. Coman, Director, State Bureau of Investigation, - N.C.A.G. - (January 3, 1996).

Construction. - Section 15A-145 and this section which prescribe procedures for expunction of criminal records, operate as exceptions to the general prohibition to the alteration of records. Thus, the statutes should be strictly construed. See opinion of Attorney General to James J. Coman, Director, State Bureau of Investigation, - N.C.A.G. - (January 3, 1996).

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ATTACHMENT VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 262

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

S262-ASA-21 [v.1]

Date _____,2001

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

Representative Nesbitt

moves to amend the bill on page 2, line 29
by inserting the word "additional" between the "those" and "premiums".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 262

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

S262-ASA-22 [v.1]

Date _____,2001

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

Representative Nesbitt

1 moves to amend the bill on page 1, line 12
2 by deleting "a crime" and inserting "an infraction or crime".
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT VIII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 262

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

S262-ASA-20 [v.1]

Date _____,2001

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

Representative Nesbitt

1 moves to amend the bill on page 1, line 26
2 by deleting the word "may" and inserting the word "shall".
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 262

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

S262-ASA-23 [v.1]

Date _____,2001

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

Representative Nesbitt

moves to amend the bill on page 1, line 13
by rewriting the line to read:
"dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 4

SENATE BILL 173*
Corrected Copy 2/20/01
Judiciary II Committee Substitute Adopted 4/19/01
Fourth Edition Engrossed 4/23/01

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. – An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The intelligence quotient test referred to in subdivision (a)(2) of this section must have been administered prior to the commission of the alleged crime. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree.

(f) In the event the court enters an order pursuant to this section finding that the defendant is mentally retarded, or is found not mentally retarded, the State or the defendant may appeal to the Court of Appeals as of right from the order. The State or the defendant shall have ten days to determine whether to take an appeal from the order finding that the defendant is mentally retarded. The taking of an appeal by the State or the defendant stays the effectiveness of the court's order and any order fixing a date for trial. Within six months of the enactment date of this subsection, the Supreme Court shall adopt rules to ensure that appeals pursuant to this subsection are expeditiously perfected, reviewed, and determined so that pretrial delays are minimized."

SECTION 2. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2005. Capital offenses; State has discretion as to whether to seek the death penalty.**

(a) The State may try a defendant capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. If a defendant indicted for first degree murder pleads guilty to the offense, the State may choose not to seek the death penalty, even if evidence of an aggravating circumstance exists. The State may accept a guilty plea from a defendant for first degree murder and agree as part of a plea bargain that the State shall not seek the death penalty for the capital offense, even if evidence of an aggravating circumstance exists.

The State may exercise its discretion to try a defendant noncapitally for first degree murder or to accept a guilty plea and not seek the death penalty at any time during the pretrial proceedings, the trial, or the sentencing hearing.

(b) If a defendant is convicted of or pleads guilty to first degree murder when the State elects not to seek the death penalty, then the court shall impose a sentence of life imprisonment without parole."

SECTION 3. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) ~~Upon~~ Except as provided in G.S. 15A-2005, upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in

which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

(3) In the proceeding there shall not be any requirement to resubmit evidence presented during the guilt determination phase of the case, unless a new jury is impaneled, but all such evidence is competent for the jury's consideration in passing on punishment. Evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (e) and (f). Any evidence which the court deems to have probative value may be received.

(4) The State and the defendant or his counsel shall be permitted to present argument for or against sentence of death. The defendant or defendant's counsel shall have the right to the last argument."

SECTION 4. G.S. 15A-2001 reads as rewritten:

"§ 15A-2001. Capital offenses; plea of guilty.

(a) Any person who has been indicted for an offense punishable by death may enter a plea of guilty at any time after his ~~indictment, and the~~indictment.

(b) If the defendant enters a guilty plea to first degree murder and the State chooses not to seek the death penalty as provided in G.S. 15A-2005, then the judge of the superior court having jurisdiction shall sentence the person to life imprisonment without parole.

(c) If the defendant enters a guilty plea to first degree murder and the State chooses to seek the death penalty, then the judge of the superior court having jurisdiction may sentence such person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before sentencing the ~~defendant,~~defendant in a case in which the State is seeking the death penalty, the presiding judge shall impanel a jury for the limited purpose of hearing evidence and determining a sentence recommendation as to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the defendant pleads guilty and the State seeks the death penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to defendants who have been tried and found guilty by a jury."

SECTION 5. This act becomes effective December 1, 2001, and applies to trials begun on or after that date.

SENATE BILL 173:
No Death Penalty/Mentally Retarded

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Ballance
Date:	May 1, 2001	**Summary by:**	Susan L. Sitze
Version:	4th Edition		Committee Counsel

SUMMARY: ***Senate Bill 173 provides that a mentally retarded person convicted of first degree murder shall not be sentenced to death, and also provides that the District Attorney has discretion as to whether to seek the death penalty in all other capital cases.***

CURRENT LAW: Current law does not provide an exemption from the death penalty for mentally retarded persons. G.S. 15A-2000(f)(2) and (6) provide two mitigating circumstances which may be potentially applied to mentally retarded persons in considering whether a particular defendant should receive the death penalty. The current mitigating circumstances that may apply are that: "the capital felony was committed while the defendant was under the influence of mental or emotional disturbance" and/or "the capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was impaired".

The North Carolina Supreme Court has found that under current law the District Attorney has no discretion in whether or not to seek the death penalty if the defendant is charged with first degree murder and there is at least one aggravating factor.

BILL ANALYSIS: **Section 1** of Senate Bill 173 would prohibit a mentally retarded person from receiving the death penalty for first-degree murder.

The bill defines "**mentally retarded**" as significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. "**Significantly subaverage intellectual functioning**" is defined in the bill as an intelligence quotient (IQ) of 70 or below on an individually administered standardized IQ test. Under the provisions of the bill the defendant may make a motion prior to trial for a hearing to determine whether the defendant is mentally retarded. The required IQ test must have been administered prior to the commission of the alleged crime. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant. There is an appeal of right to the Court of Appeals for the State if the defendant is found mentally retarded and for the defendant if the defendant is found not mentally retarded. Either party has 10 days to decide to take the appeal of right and any orders of the court regarding mental retardation and the setting of the trial date are stayed pending the appeal. The Supreme Court has 6 months from the enactment of the bill to establish rules to expedite the appeals on this issue.

Sections 2, 3 & 4 give the District Attorney the discretion to decide whether to try a first degree murder case capitally or noncapitally, even if evidence of an aggravating factor exists. This discretion also applies if the defendant chooses to plead guilty to first degree murder. If the District Attorney chooses not to seek the death penalty, the court must sentence the defendant to life imprisonment without parole.

The bill becomes effective December 1, 2001 and applies to trials begun on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 262 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 30-31

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following new section to read:

"SECTION 2. G.S. 15A-146(a) reads as rewritten:

'(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.'"

SIGNED _____

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. _____ DATE _____

S. B. No. 262 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page _____, line _____
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 and on page 2, line 31
5 by deleting "2." and inserting "3."
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT XIII

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ House Committee Substitute for
S.B. 262 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON IMPROPERLY CHARGED WITH A CRIMINAL OFFENSE AS A RESULT OF IDENTITY FRAUD MAY HAVE HIS OR HER RECORD EXPUNGED.

☐ 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 (# 2), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (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 D

SENATE BILL 262
Judiciary I Committee Substitute Adopted 4/18/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S262-PCS3442-SA-21

Short Title: Expunge Improper Crim. Charge/Identity Fraud. (Public)

Sponsors:

Referred to:

February 27, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON IMPROPERLY CHARGED WITH A CRIMINAL OFFENSE AS A RESULT OF IDENTITY FRAUD MAY HAVE HIS OR HER RECORD EXPUNGED.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A is amended by adding a new section to read:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity fraud.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person to commit an infraction or crime and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Motor Vehicles, or any other State or local government agencies bearing record of the same to

expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 2. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false

statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 3. This act becomes effective October 1, 2001, and applies to charges filed before, on, or after the effective date.

House Judiciary I Committee

May 3, 2001

Minutes

The House Judiciary I Committee met on Thursday, May 3, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that a subcommittee would be appointed to study Senate Bill 470, AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW. He appointed the following members to the subcommittee: Representative Sutton, Chair, and Representatives Arnold, Blue, Clary and Redwine.

The Chairman announced that Senate Bill 402 had been removed from the agenda.

Senator Rand was recognized to explain Senate Bill 195, AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE AS REGISTERED NURSES OR LICENSED PRACTICAL NURSES UPON THE REQUEST OF THE NORTH CAROLINA BOARD OF NURSING, TO AUTHORIZE THE BOARD OF NURSING TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF PERSONS APPLYING TO PRACTICE NURSING IN THE STATE OF NORTH CAROLINA, AND TO AMEND THE POWERS OF THE BOARD OF NURSING TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS UPON THE BOARD'S REQUEST, (Attachment III). The bill would require the Board of Nursing to ensure that all initial applicants for licensure as a registered practical nurse have their State and national criminal histories checked. The Board would also be authorized to deny licensure if the criminal history record check reveals one or more convictions of crimes that bear on the applicant's fitness for licensure, depending on the circumstances and other factors. Further explanation may be found in the bill analysis that was prepared by Ms. Susan L. Sitze, Committee Counsel, (Attachment IV).

Mr. Howard Kramer, representing the State Nursing Board, responded to several questions.

Representative Arnold moved that the bill be given a favorable report and be re-referred to the Committee on Finance. The motion carried, (Attachment V).

Senator Hoyle was recognized for an explanation of Senate Bill 310, AN ACT TO CLARIFY THE LAW GOVERNING ADMINISTRATIVE PROCEEDINGS OF THE SECRETARY OF STATE; TO AUTHORIZE THE SECRETARY OF STATE TO APPOINT A HEARING OFFICER TO CONDUCT HEARINGS ON LICENSING MATTERS; AND TO AUTHORIZE THE SECRETARY OF STATE TO ADOPT UNIFORM NATIONAL SECURITIES REGULATION STANDARDS BY TEMPORARY RULE, (Attachment VI).

A proposed House Committee Substitute for Senate Bill 310 was distributed to the members of the committee, (Attachment VII). Representative Alexander moved adoption of the committee substitute for the purpose of discussion. The motion carried. The committee substitute amends the law regarding administrative proceedings conducted by the secretary of State under the North Carolina Securities Act, Investment Advisor Act, and Commodities Act to provide that hearings on the secretary's decisions are to be conducted within 20 days of receipt of request of a hearing, in accordance with the Administrative Procedures Act, which is applicable to most other State government hearings. The bill authorized the Secretary to adopt temporary rules to implement the uniform Statement of Policies to promote uniformity in state securities regulations. A bill analysis, prepared by Frank Folger, Committee Counsel, is attached to the minutes, (Attachment VIII).

Mr. David Massey, Secretary of State's Office, provided further explanation and responded to several questions.

Representatives Alexander and Arnold moved that the proposed House Committee Substitute to Senate Bill 310 be given a favorable report and that the original bill be given an unfavorable report. The motion carried, (Attachment IX).

Senator Fletcher Hartsell was recognized to explain Senate Bill 336, AN ACT TO MAKE IT UNLAWFUL TO FRAUDULENTLY OR UNNECESSARILY OBTAIN AMBULANCE SERVICES IN VARIOUS COUNTIES OR IN HALIFAX COUNTY, (Attachment X).

Representative Blue offered an amendment, (Attachment XI), that removed the words "or in Halifax County" from the title. He moved adoption of the amendment. The motion carried.

Senator Hartsell said that the bill would add seven counties to the list of counties in which it is a criminal violation for certain activities associated with inappropriate ambulance calls.

A bill analysis, prepared by Mr. Frank Folger, Committee Counsel, was distributed to the members of the committee, (Attachment XII). Mr. Folger commented briefly on the bill.

Representative Insko moved that the amendment be incorporated into a House Committee Substitute, that the committee substitute be given a favorable report, and that the Senate bill be given an unfavorable report. The motion carried, (Attachment XIII). A copy of the committee substitute is attached to the minutes, (Attachment XIV).

Senator Lucas was recognized for an explanation of Senate Bill 587, AN ACT AUTHORIZING THE CITY OF DURHAM TO REQUIRE OWNERS OF LANDMARKS AND BUILDINGS WITHIN HISTORIC DISTRICTS TO MAINTAIN THEIR PROPERTY IN GOOD CONDITION, (Attachment XV.

Mr. Rick Zechini, Committee Counsel, distributed a bill analysis, (Attachment XVI), and briefly explained the provisions of the bill.

Representative Arnold moved that the bill be given a favorable report. The motion carried, (Attachment XVII).

The meeting adjourned at 10:40 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MAY 3, 2001

10:00 A.M.

AGENDA

SENATE BILL 195 – CRIMINAL RECORD CHECKS FOR NURSES
SENATOR TONY RAND

SENATE BILL 310 - UNIFORM SECURITIES REGULATION
SENATOR DAVID HOYLE

SENATE BILL 336 – VARIOUS COUNTIES AMBULANCE SERVICE
SENATOR FLETCHER HARTSELL

SENATE BILL 402 – KEEP ALTERNATE BASE PERIOD
SENATOR HAMILTON HORTON

SENATE BILL 587 – DURHAM HISTORIC PROPERTIES
SENATOR JEANNE LUCAS

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 3, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dyral Massey	SEC of STATE
Tony R. Brown	SOS
Allan CJ Russ	Dept. of Sec. of State
Barbara Carsten	Manning, Fulton & Skinner
Stephanie Mann	NC Assn. of Realtors
Margaret R. Westbrook	Kennedy Covington
Robin Hudson	St. Francis of Assisi, Kal
John Phelps	NCLM
Julie Taylor	North CAROLINA Nurses Association
Donna H Mooney	NCBON
Samuel C. Sayson	NC Med Soc
Melissa Lovell	DOJ
Tom Task	Freedom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 195

Health Care Committee Substitute Adopted 3/14/01

Short Title: Criminal Record Checks for Nurses. (Public)

Sponsors:

Referred to:

February 21, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE AS REGISTERED NURSES OR LICENSED PRACTICAL NURSES UPON THE REQUEST OF THE NORTH CAROLINA BOARD OF NURSING, TO AUTHORIZE THE BOARD OF NURSING TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF PERSONS APPLYING TO PRACTICE NURSING IN THE STATE OF NORTH CAROLINA, AND TO AMEND THE POWERS OF THE BOARD OF NURSING TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS UPON THE BOARD'S REQUEST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.11. Criminal record checks of applicants for licensure as registered nurses or licensed practical nurses.**

The Department of Justice may provide to the North Carolina Board of Nursing from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a registered nurse or licensed practical nurse under Article 9A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section

confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 9A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-171.48. Criminal history record checks of applicants for licensure.**

(a) Definitions. -- The following definitions shall apply in this section:

(1) Applicant. -- A person applying for licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 and G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32.

(2) Criminal history. -- A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant

to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subsection (a)(2) of this section, the Board may deny licensure. However, the conviction shall not automatically bar licensure, and the Board shall consider all of the following factors in determining whether licensure shall be denied:

(1) The level of seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing the factors, the Board determines that an applicant is ineligible for licensure, the Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited immunity. -- The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 3. G.S. 90-171.23(b) is amended by adding a new subdivision to read:

"(b) Duties, powers. The Board is empowered to:

...

(19) Request that the Department of Justice conduct criminal history record checks of applicants for licensure pursuant to G.S. 114-19.11."

SECTION 4. This act becomes effective January 1, 2002.

SENATE BILL 195:
Criminal Record Checks for Nurses

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Rand
Date:	May 3, 2001	**Summary by:**	Susan L. Sitze
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 195 would require the Board of Nursing to ensure that all initial applicants for licensure as a registered nurse or licensed practical nurse have their State and national criminal histories checked. The Board would be authorized to deny licensure if the criminal history record check reveals one or more convictions of crimes that bear on the applicant's fitness for licensure, depending on the circumstances and other factors.***

CURRENT LAW: Current law does not authorize the Board to conduct criminal background checks. The Board is dependent on the accuracy of self-reports.

BILL ANALYSIS: **Section 1** amends Article 4 of Chapter 114 to authorize the Department of Justice to provide the results of any criminal background check at the request of the Board. The Board is required to keep the results confidential. In addition, the section authorizes the Department to charge a fee for the State and national checks not to exceed the actual cost of locating, editing, researching and retrieving the information.

Section 2 amends the Nursing Practice Act to require all applicants to consent to a criminal history record check. The Board is authorized to deny licensure if the applicant refuses to consent. The section requires the Board to submit the fingerprints to the Department of Justice for the conduction of the check. If the criminal history check reveals a conviction of one or more crimes that are enumerated in the bill, the Board is authorized to deny licensure. In making this determination the Board must take into consideration several factors that are listed in the bill.

If the Board determines that licensure should be denied, the applicant may appeal the decision by appearing before the Board, and by doing so, the applicant shall be deemed as exhausting all administrative remedies under 150B of the Administrative Procedures Act.

This section also provides the Board and its officers and employees immunity from liability for denying licensure based on the criminal history record check.

Section 3. Provides conforming language.

Section 4. Effective date: January 1, 2002.

BACKGROUND:

According to the NC Board of Nursing, during the year 2000, the Board issued 7,854 initial licenses for registered nurses and licensed practical nurses. Of these, 4,369 were "by credential". Seven states require applicants for licensure to consent to a State and national criminal history background check.

**This summary was modified from an original summary by Linda Attarian.*

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 195 A BILL TO BE ENTITLED AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE AS REGISTERED NURSES OR LICENSED PRACTICAL NURSES UPON THE REQUEST OF THE NORTH CAROLINA BOARD OF NURSING, TO AUTHORIZE THE BOARD OF NURSING TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF PERSONS APPLYING TO PRACTICE NURSING IN THE STATE OF NORTH CAROLINA, AND TO AMEND THE POWERS OF THE BOARD OF NURSING TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS UPON THE BOARD'S REQUEST.

☐ 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 (# 2), ☐-which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (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 1

SENATE BILL 310

Short Title:	Uniform Securities Regulation-AB.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING ADMINISTRATIVE PROCEEDINGS OF THE SECRETARY OF STATE; TO AUTHORIZE THE SECRETARY OF STATE TO APPOINT A HEARING OFFICER TO CONDUCT HEARINGS ON LICENSING MATTERS; AND TO AUTHORIZE THE SECRETARY OF STATE TO ADOPT UNIFORM NATIONAL SECURITIES REGULATION STANDARDS BY TEMPORARY RULE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-18(a) reads as rewritten:

"(a) The Administrator may by order deny or revoke any exemption specified in subdivisions (8), (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~ hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order."

SECTION 2. G.S. 78A-29(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (d) that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination."

SECTION 3. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall

by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 5. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 6. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 7. G.S. 78A-45(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed. The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

SECTION 8. G.S. 78C-26(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, and make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed. The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

SECTION 9. G.S. 150B-21.1(a2) reads as rewritten:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General ~~Statutes.~~Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

SECTION 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 310
PROPOSED HOUSE COMMITTEE SUBSTITUTE S310-CSSO-32 [v.1]

4/30/2001 2:33:36 PM

Short Title: Uniform Securities Regulation-AB. (Public)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW GOVERNING ADMINISTRATIVE PROCEEDINGS OF THE SECRETARY OF STATE; TO AUTHORIZE THE SECRETARY OF STATE TO APPOINT A HEARING OFFICER TO CONDUCT HEARINGS ON LICENSING MATTERS; AND TO AUTHORIZE THE SECRETARY OF STATE TO ADOPT UNIFORM NATIONAL SECURITIES REGULATION STANDARDS BY TEMPORARY RULE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-18(a) reads as rewritten:

"(a) The Administrator may by order deny or revoke any exemption specified in subdivisions (8), (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within ~~15~~ 20 days of the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~ hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order."

SECTION 2. G.S. 78A-29(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (d) that it has been entered and of the reasons therefor and that within ~~15~~20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination."

SECTION 3. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within ~~15~~20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall

by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 5. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within ~~15~~ 20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing.~~hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 6. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 7. G.S. 78D-4(e) reads as rewritten:

"(e) If the public interest or the protection of investors so requires, the Administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the Administrator shall promptly notify the person claiming said status that an order has been entered and the reasons therefor and that within ~~30~~20 days after the receipt of a written request the matter will be ~~set~~ scheduled

for hearing. The provisions of G.S. 78D-30 shall apply with respect to all subsequent proceedings."

SECTION 8. G.S. 78D-30 reads as rewritten:

"§ 78D-30. Procedure for entry of an order.

(a) The Administrator shall commence an administrative proceeding under this Chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(b) Upon entry of a notice of intent or summary order, the Administrator shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the Administrator shall inform all interested parties of the dates, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the Administrator shall inform all interested parties that they have 30 business days from the entry of the order to file a written request for a hearing on the matter with the Administrator and that the hearing will be scheduled ~~to commence with 30 business~~ within 20 days after the receipt of the written request.

(c) If the proceeding is pursuant to a summary order, the Administrator, whether or not a written request for a hearing is received from any interested party, may ~~set~~ schedule the matter ~~down~~ for hearing on the Administrator's own motion.

(d) If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of summary order under subsection (b) of this section and no hearing is ordered by the Administrator, the summary order will automatically become a final order after 30 business days from the date service of the notice of summary order was received.

(e) If a hearing is requested or ordered, the Administrator, after notice of, and opportunity for, hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(f) No final order or order after hearing may be returned without:

(1) Appropriate notice to all interested persons;

(2) Opportunity for hearing by all interested persons; and

(3) Entry of written findings of fact and conclusions of law.

Every hearing in an administrative proceeding under this Chapter shall be public unless the Administrator grants a request joined in by all the respondents that the hearing be conducted privately. "

SECTION 9. G.S. 78A-45(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed.

The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

SECTION 10. G.S. 78C-26(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, and make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed. The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

SECTION 11. G.S. 78D-25(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed. The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

SECTION 12. G.S. 150B-21.1(a2) reads as rewritten:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General ~~Statutes.~~Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the ~~Codifer~~ Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

SECTION 13. This act is effective when it becomes law.

SENATE BILL 310:
Uniform Securities Regulation

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Hoyle
Date:	May 1, 2001	**Summary by:**	Frank W. Folger
Version:	S310-CSSO-32		Committee Counsel

SUMMARY: ***Senate Bill 310 amends the law regarding administrative proceedings conducted by the Secretary of State under the North Carolina Securities Act, Investment Advisor Act, and Commodities Act to provide that hearings on the Secretary's decisions are to be conducted within 20 days of receipt of request of a hearing, in accordance with the Administrative Procedures Act, which is applicable to most other State government hearings. The bill also authorizes the Secretary to appoint hearings officers to conduct these hearings. In addition, the bill authorizes the Secretary to adopt temporary rules to implement the uniform Statement of Policies to promote uniformity in state securities regulations.***

CURRENT LAW: Current law directs the Secretary of State to conduct various hearing under the Securities Act, Investment Advisor Act and Commodities Act but does not specify how those hearings are to be conducted. The law also directs that the Secretary or Deputy Secretaries can conduct these hearings but it does not authorize any other person to do so. Current law does not allow the Secretary to adopt new rules relative to the North American Securities Administrators Association's Statements of Policy promoting uniform state securities regulation by temporary rules.

BILL ANALYSIS: Sections 1 – 8 provide that the following hearings are to be conducted in accordance with Chapter 150B, the Administrative Procedure Act:

- hearings conducted under the Securities Act on issues related to determinations of exemptions from the Securities Act, registration of securities, registration of security dealers and salespersons and cease and desist orders,
- hearings conducted under the Investment Advisors Act on issues related to determinations on registration and cease and desist orders, are to be.
- hearings conducted under the Commodities Act on issues related to determination of the exemptions of a qualified seller under the Act.

Sections 9-11 would authorize the Secretary to appoint hearings officers to conduct hearings under the Securities Act, Investment Advisors Act, and Commodities Act.

Section 12 would permit the Secretary to adopt as temporary rules uniform Statements of Policy as adopted by the North American Securities Administrators Association to promote uniformity of state securities regulation. This temporary rulemaking exception is the same as permitted for temporary rules to implement certification technology provision under the Electronic Commerce Act. This provision provides for a modified rulemaking process that requires 30-days prior public notice, rights to make public comments and requires at least one public hearing. Normally temporary rulemaking is only permitted for recent acts of the General Assembly or Congress, a serious and unforeseen threat to public health, safety or welfare, federal regulations or court orders. Under this provision while Statements of Policy may be adopted on a temporary basis, Chapter 150B requires the Secretary to proceed with the adoption of permanent rules and submission of the permanent rules to the Rules Review Commission for

review within 270 days of the date of publication of the temporary rule. The permanent rule is subject to review by the Rules Review Commission and disapproval by the General Assembly. If the permanent rule does not become effective, the temporary rule expires.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

Walker Reagan, counsel to the Senate Commerce Committee, contributed to this summary.

S310-SMRU-001

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 310 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW GOVERNING ADMINISTRATIVE PROCEEDINGS OF THE SECRETARY OF STATE; TO AUTHORIZE THE SECRETARY OF STATE TO APPOINT A HEARING OFFICER TO CONDUCT HEARINGS ON LICENSING MATTERS; AND TO AUTHORIZE THE SECRETARY OF STATE TO ADOPT UNIFORM NATIONAL SECURITIES REGULATION STANDARDS BY TEMPORARY RULE.

☐ 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) ~~(Committee Substitute Bill # 1), (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 2

SENATE BILL 336
Second Edition Engrossed 3/15/01

Short Title:	Cabarrus Ambulance Service.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	State and Local Government.	

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO FRAUDULENTLY OR UNNECESSARILY OBTAIN AMBULANCE SERVICES IN VARIOUS COUNTIES OR IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-111.2 reads as rewritten:

"**§ 14-111.2. Obtaining ambulance services without intending to pay therefor – certain named counties.**

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Alamance, Anson, Ashe, Beaufort, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only."

SECTION 2. G.S. 14-111.3 reads as rewritten:

"**§ 14-111.3. Making unneeded ambulance request in certain counties.**

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an

ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Alamance, Ashe, Buncombe, Cabarrus, Camden, Carteret, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Halifax, Haywood, Hoke, Macon, Madison, New Hanover, Onslow, Pender, Polk, Robeson, Washington, Wilkes and Yadkin."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XI**

(Please type or use ballpoint pen)

EDITION No. 2nd Ed. Engrossed

H. B. No. _____ DATE May 3, 2001

S. B. No. 336 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 1, line 4

2 ( ) WHICH CHANGES THE TITLE

3 by ~~removing the~~ rewriting the line to read "COUNTIES."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 336:
Various Counties Ambulance Service

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Hartsell
Date:	May 3, 2001	**Summary by:**	Frank W. Folger
Version:	Second Edition Engrossed		Committee Counsel

SUMMARY: This bill would add 7 more counties each to the lists of counties which render it a crime to obtain ambulance services with the intent to defraud and which render it a crime to make an unnecessary or false request for ambulance services.

CURRENT LAW: In 43 counties it is a Class 2 misdemeanor to request an ambulance without intending to pay for the service, if financially able to do so. In 20 counties it is a Class 3 misdemeanor to request unneeded ambulance services or to make a false report that an ambulance is needed.

BILL ANALYSIS: Section 1 would add 7 more counties (Alamance, Cabarrus, Carteret, Halifax, New Hanover, Onslow, and Pender) to the list of counties in G.S. 14-111.2 in which obtaining ambulance services without the intent to pay for them, though financially able to do so, is punishable as a Class 2 misdemeanor.

Section 2 would add these same 7 counties to the list of counties in G.S. 14-111.3 in which making an unneeded or false ambulance request is punishable as a Class 3 misdemeanor.

This act is effective December 1, 2001.

BACKGROUND: Conviction for a Class 2 misdemeanor carries a punishment of up to 60 days incarceration and a $1000 fine. Conviction for a class 3 misdemeanor is punishable up to 20 days incarceration and a $200 fine. (N.C.G.S. §15A-1340.23)

Al Andrews, counsel to the Senate State and Local Government Committee, and R. Erika Churchill , counsel to the House Local and Regional Government I Committee, contributed to this summary.

§ 14-111.2. Obtaining ambulance services without intending to pay therefor - certain named counties.

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Anson, Ashe, Beaufort, Caldwell, Camden, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, Orange, Pasquotank, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only.

(1967, c. 964; 1969, cc. 292, 753; c. 1224, s. 4; 1971, cc. 125, 203, 300, 496; 1973, c. 880, s. 2; 1977, cc. 63, 144; 1983, c. 42, s. 1; 1985, c. 335, s. 1; 1987 (Reg. Sess., 1988), c. 910, s. 1; 1993, c. 539, s. 50; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 9, s. 2; 1999-64, s. 1; 2000-15, s. 1.)

Effect of Amendments. - Session Laws 1999-64, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date, inserted "Durham" in the second paragraph.

Session Laws 2000-15, s. 1, effective December 1, 2000, and applicable only to offenses committed on or after that date, inserted "Camden" in the second paragraph.

§ 14-111.3. Making unneeded ambulance request in certain counties.

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Ashe, Buncombe, Camden, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Haywood, Hoke, Macon, Madison, Polk, Robeson, Washington, Wilkes and Yadkin.

(1965, c. 976, s. 2; 1971, c. 496; 1977, c. 96; 1983, c. 42, s. 2; 1985, c. 335, s. 2; 1987 (Reg. Sess., 1988), c. 910, s. 2; 1989, c. 514; 1989 (Reg. Sess., 1990), c. 834; 1993, c. 539, s. 51; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 9, s. 3; 1999-64, s. 2; 2000-15, s. 2.)

Effect of Amendments. - Session Laws 1999-64, s. 2, effective December 1, 1999, and applicable to offenses committed on or after that date, inserted "Durham" in the second paragraph.

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 336 A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL TO FRAUDULENTLY OR UNNECESSARILY OBTAIN AMBULANCE SERVICES IN VARIOUS COUNTIES OR IN HALIFAX COUNTY.

☐ 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~~) (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 D

SENATE BILL 336
Second Edition Engrossed 3/15/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S336-PCS6274-SOx-36

Short Title: Cabarrus Ambulance Service. (Local)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO FRAUDULENTLY OR UNNECESSARILY OBTAIN AMBULANCE SERVICES IN VARIOUS COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-111.2 reads as rewritten:

"**§ 14-111.2. Obtaining ambulance services without intending to pay therefor – certain named counties.**

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Alamance, Anson, Ashe, Beaufort, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Halifax, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Polk, Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only."

SECTION 2. G.S. 14-111.3 reads as rewritten:

"**§ 14-111.3. Making unneeded ambulance request in certain counties.**

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an

ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Alamance, Ashe, Buncombe, Cabarrus, Camden, Carteret, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Halifax, Haywood, Hoke, Macon, Madison, New Hanover, Onslow, Pender, Polk, Robeson, Washington, Wilkes and Yadkin."

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 2

SENATE BILL 587

State and Local Government Committee Substitute Adopted 4/25/01

Short Title: Durham Historic Properties. (Local)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF DURHAM TO REQUIRE OWNERS OF LANDMARKS AND BUILDINGS WITHIN HISTORIC DISTRICTS TO MAINTAIN THEIR PROPERTY IN GOOD CONDITION.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is further amended by adding the following new section:

"Sec. 94.7. Maintenance of Landmarks and Historic Buildings.

The City may enact ordinances requiring owners of designated landmarks or owners of contributing buildings, structures, or sites within historic districts to maintain their property in good condition. Any ordinances adopted under this section shall contain appropriate safeguards to protect owners if the required maintenance would cause undue economic hardship."

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

SENATE BILL 587:
Durham Historic Properties

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Lucas
Date:	May 3, 2001	**Summary by:**	Rick Zechini
Version:	Second Edition		Committee Counsel

BILL ANALYSIS: Senate Bill 587 amends the Charter of the City of Durham to authorize the City of Durham to enact ordinances requiring owners of designated landmarks or owners of contributing buildings, structures, or sites within historic districts to maintain their property in good condition. Any ordinance adopted pursuant to this authority shall contain appropriate safeguards to protect owners if the required maintenance would cause economic hardship. This act is effective when it becomes law.

BACKGROUND: Part 3C of Article 19 of Chapter 160A of the General Statutes authorizes municipalities and counties to establish and provide for the special protection of historic districts. Historic districts are areas of special significance in terms of their history, prehistory, architecture, and/or culture, and which possess integrity of design, setting, materials, feeling, and association. In addition, municipalities may designate specific properties as historic landmarks where the properties are of special significance in terms of their history, prehistory, architecture, and/or culture, and possess integrity of design, setting, materials, feeling, and association.

An application for a certificate of appropriateness must be approved by the proper municipal or county body before the exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), any above-ground utility structure, or any type of outdoor advertising sign located on a property designated as a historic landmark or located in a historic district may be erected, altered, restored, moved, or demolished. Part 3C of Article 19 of Chapter 160A of the General Statutes does not prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a historic landmark which does not involve a change in design, material, or appearance thereof, nor does it prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature which the building inspector or similar official certifies as required by the public safety because of an unsafe or dangerous condition.

A municipality or county may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. An ordinance adopted pursuant to this authority shall provide appropriate safeguards to protect property owners from undue economic hardship.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 587 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE CITY OF DURHAM TO REQUIRE OWNERS OF LANDMARKS AND BUILDINGS WITHIN HISTORIC DISTRICTS TO MAINTAIN THEIR PROPERTY IN GOOD CONDITION.

☒ 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 # 1), (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 Judiciary I Committee

May 8, 2001

Minutes

The House Judiciary I Committee met on Tuesday, May 8, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Insko, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that Senate Bill 300 – Amend NC Emergency Management Laws had been removed from the agenda.

Vice Chairman Dan Blue was asked to preside over the meeting.

Senator Rand was recognized to explain Senate Bill 774 – AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES, (Attachment III). The bill exempts billing information on customers of public enterprises from disclosure under the Public Records Act. The bill addresses concerns of certain public enterprises, particularly those in the electric services area, over the apparent requirement that they must copy customers bills for any and all in the public who ask for copies and pay the required fee.

A bill analysis, prepared by Frank Folger, Committee Counsel, was distributed to the members of the committee, (Attachment IV), along with a copy of the statute regarding confidential information, (Attachment V).

Representative Walker moved that the bill be given a favorable report. The motion carried, (Attachment VI).

Senator Rand was again recognized to explain Senate Bill 910, AN ACT TO ALLOW THE COURT TO ISSUE AN ORDER FOR ARREST WHEN A DEFENDANT FAILS TO APPEAR IN COURT AFTER RECEIVING A CITATION FOR A MISDEMEANOR, (Attachment VII). Currently there is no clearly spelled out means by which a judge can issue an order for arrest for a cited individual's failure to appear on a uniform citation issued by a law enforcement officer. The bill clarifies that an order for arrest may be issued for a defendant's failure to appear in court as directed by a citation for a misdemeanor.

Ms. Susan Sitze, Committee Counsel, pointed out that the law would apply only when a citation is issued for a misdemeanor. Additional explanation is included in the bill analysis prepared by Ms. Sitze. (Attachment VIII).

Mr. Colon Willoughby, Wake County District Attorney, commented briefly in support of the bill.

Representative Sutton moved for a favorable report and the motion carried, (Attachment IX).

Senator Rand was recognized to explain Senate Bill 931, AN ACT TO REQUIRE A JUDGE TO CONDUCT OVERSIGHT OF THE DISCOVERY PROCESS IN A CAPITAL CASE TO ENSURE COMPLIANCE WITH CONSTITUTIONAL AND STATUTORY LAW, (Attachment X). The bill would require upon motion by the State or the defendant prior to a capital trial, that a superior court judge conduct an in-camera hearing to determine whether the prosecution has complied with statutes and Constitutional requirements for providing discovery to the defendant.

A bill analysis, prepared by Ms. Sitze, is attached, (Attachment XI).

Mr. Willoughby spoke in support of the bill and responded to a few questions.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, spoke in support of the bill.

Representative Insko moved that the bill be given a favorable report. The motion carried, (Attachment (XII).

Senator Rand was recognized to explain Senate Bill 1004, AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE, (Attachment XIII). The bill would broaden the definition of emergency communications and would increase the punishment to a Class A1 misdemeanor.

Additional explanation is found in the bill analysis prepared by Ms. Sitze, (Attachment XIV).

Mr. Ripley Rand, Wake County District Attorney's office, spoke in support of the bill.

Ms. Sitze commented briefly on the bill, noting that it raises the punishment to the highest level of misdemeanors.

Following committee discussion regarding the need to address interference with alarm systems, the bill was displaced to allow staff time to prepare amendments.

The meeting adjourned at 10:45 a.m.

Representative Dan Blue
Vice Chairman

Emily Reynolds Freeman
Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MAY 8, 2001
10:00 A.M.

AGENDA

SENATE BILL 300 – AMEND NC EMERGENCY MANAGEMENT LAWS
SENATOR FOUNTAIN ODOM

SENATE BILL 774 – PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY
SENATOR TONY RAND

SENATE BILL 910 – FAILURE TO APPEAR FOR MISDEMEANOR CITATION
SENATOR TONY RAND

SENATE BILL 931 CAPITAL CASE/JUDGE OVERSEE DISCOVERY
SENATOR TONY RAND

SENATE BILL 1004 – INTERFERE WITH EMERGENCY COMMUNICATION
SENATOR TONY RAND

VISITOR REGISTRATION SHEET

JUDICIARY I — **May 8, 2001**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alice Garland	Electricities
Katherine David	Electricities
Dick Zeh	NCAOC
Charles Cromer	NCATL
Katherine Joyce	NC Assoc. of Electric Co-ops
Jay Raise	NC Assoc. of Electric Co-ops
Howard Lenoir	N.C. Bar
Barbara Constantine	Manning, Fulton & Skinner
Peg Dorer	Conference of DAs
Margaret Westbrook	Kennedy Covington
Ruth Sappie	NCDOT
LYMAN COOPER	CSX TRANSPORTATION
Hal Miller	NCACC
Andy Concannon	NCLM
Jim Blackburn	NC Ass'n of County Commissioners
Deb Hoss	AOC
Jay Chaudhuri	DOT
Ripley Rand	District Attorneys Office - Wake Cty.
Mat Osborne	AOC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 774

Rules and Operations of the Senate Committee Substitute Adopted 4/24/01

Short Title: Public Enterprise Customer Billing Privacy. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

a. Constitutes a "trade secret" as defined in G.S. 66-152(3).

b. Is the property of a private "person" as defined in G.S. 66-152(2).

c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.

d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(3) Reveals billing information related to customers of public enterprises."

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

SENATE BILL 774:
Public Enterprise Customer Billing Privacy

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 8, 2001	**Summary by:**	Frank W. Folger
Version:	Second Edition		Committee Counsel

SUMMARY: ***This bill exempts billing information on customers of public enterprises from disclosure under the Public Records Act.***

CURRENT LAW: Public records are defined statutorily as documentary information made or received pursuant to law or ordinance in the transaction of public business by North Carolina, its subdivisions, or agencies of either. N.C.G.S. § 132-1(a). Unless otherwise provided, these public records are subject to being disclosed and copied for anyone in the public at minimal or no cost. N.C.G.S. §132-1(b). Billing information on customers of public enterprises is encompassed by the definition of public records and thus may be copied for anyone in the public who requests and pays any minimal fee.

Public enterprises are defined in Article 16 of Chapter 160A (N.C.G.S. §160A-311) for cities and in Article 15 of Chapter 153A (N.C.G.S. §153A-274) for counties and include: electric services (cities only), water services, wastewater collection and treatment, gas production and distribution (cities only), public transportation systems, solid waste collection and disposal, cable television (cities only), off-street parking facilities and systems, airports, certain stormwater management programs and structural, and natural stormwater and drainage systems of all types.

BILL ANALYSIS: This bill would add billing information related to customers of public enterprises to the two other exemptions from public disclosure requirements in the Public Records Act in N.C.G.S. §132-1.2. The other two exemptions are for trade secret information and account numbers for electronic payment. Under this bill, public enterprises would no longer be authorized under the Public Records Act to disclose to or copy for the requesting public billing information of its customers.

BACKGROUND: Certain public enterprises, particularly those in the electric services area, have expressed concern over the apparent requirement of the Public Records Act that they must copy customers bills for any and all in the public who asks for copies and pay the requisite fee.

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

a. Constitutes a "trade secret" as defined in G.S. 66-152(3).

b. Is the property of a private "person" as defined in G.S. 66-152(2).

c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.

d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.

(1989, c. 269; 1991, c. 745, s. 3; 1999-434, s. 7.)

Editor's Note. - Session Laws 1999-434, s. 19, provides that the Secretary of Commerce shall implement policies and procedures to ensure "Best Value" Procurement, Solution-Based Procurement, and Government-Vendor Partnership.

Session Laws 1999-434, s. 20, requires the Secretary of Commerce to develop and implement policies, procedures, and/or programs to ensure that personnel receive high quality training in the principles of "Best Value" Procurement, Solution-Based Procurement, Government-Vendor Partnership, contract administration, and project management.

Session Laws 1999-434, s. 21, provides that the Secretary of Commerce shall report to the Joint Select Committee on Information Technology on the implementation of that act on or before April 1, 2000.

Session Laws 1999-434, s. 22, provides that the Joint Select Committee on Information Technology shall study the governance of State government-wide information technology management by the creation of a centralized agency responsible for all technology-related issues. The Committee may make an interim report to the 2000 Session of the General Assembly, and shall make a final report prior to the convening of the 2001 General Assembly.

Effect of Amendments. - Session Laws 1999-434, s. 7, effective August 10, 1999, added present subdivisions (1) and (2); redesignated former subdivisions (1)-(4) as present subdivisions (1)a.-(1)d.; in the introductory language, substituted "Chapter" for "Article," inserted "or its subdivision," and substituted "that" for "which"; and made minor stylistic changes throughout.

CASE NOTES

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Private Corporation Classified as Public Agency. - Private corporations can be classified as a public agency for the purposes of this section; the critical inquiry is whether the corporation's independent authority is overshadowed by the governmental control of that corporation. State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

Public Utilities as Private Persons. - Telephone service providers were "private persons" under this section for purposes of their claim that information filed with an agency constituted "trade secrets," even though providers were public utilities subject to fair regulation, since such regulation was not comprehensive and did not overshadow independent authority exercised by providers over operation of their own businesses. State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

The addition of the language "or indicated" acts to clarify the otherwise ambiguous word "designated." As such, any application of this section either before or after 1991, should interpret the word "designated" as meaning "designated or indicated." North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).

Information Held Confidential. - Documents containing valuable business information such as projections by a cooperative electric membership corporation of electric rates for sales to its members and its methodologies for forecasting such price information, which was alleged to be of actual value to its competitors and would cause irreparable competitive harm to the corporation, were protected from disclosure by injunction under this Act. North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).

Price Lists in Contract Between Hospital and HMO. - Where price lists in a contract between a public hospital and a private HMO are not property of a private person within the meaning of this section, they are not trade secrets as defined by § 66-152(3) and are subject to disclosure under the North Carolina Public Records Act, pursuant to § 132-1 et seq. Wilmington Star-News, Inc. v. New Hanover Regional Medical Ctr., Inc., 125 N.C. App. 174, 480 S.E.2d 53 (1997), appeal dismissed, 346 N.C. 557, 488 S.E.2d 826 (1997).

Factors in Determining Whether Information is Trade Secret. - Proper factors to consider in determining whether information is a trade secret are: (1) the extent to which it is known outside the business; (2) the extent to which it is known to employees and others involved in the business; (3) the extent of measures taken to guard its secrecy; (4) its value to the business and competitors; (5) the amount of money or effort expended in its development; and (6) the ease or difficulty with which it could properly be acquired or duplicated by others. State ex rel. Utilities Comm'n v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999).

Applied in S.E.T.A. UNC-CH, Inc. v. Huffines, 107 N.C. App. 440, 420 S.E.2d 674 (1992).

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§ 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 774 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES.

☒ 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 (# 2), which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (and recomme☐ndation 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 1

SENATE BILL 910

Short Title:	Failure to Appear for Misdemeanor Citation.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO ISSUE AN ORDER FOR ARREST WHEN A DEFENDANT FAILS TO APPEAR IN COURT AFTER RECEIVING A CITATION FOR A MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-302(f) reads as rewritten:

"(f) Citation No Bar to Criminal Summons or Warrant. – If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense. If a defendant fails to appear in court as directed by a citation that charges the defendant with a misdemeanor, an order for arrest for failure to appear may be issued by a judicial official."

SECTION 2. G.S. 15A-305(b) reads as rewritten:

"(b) When Issued. – An order for arrest may be issued when:

(1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to ~~G.S. 15A-303.~~G.S. 15A-303 or a citation issued by a law enforcement officer or other person authorized by statute pursuant to G.S. 15A-302 that charged the defendant with a misdemeanor.

(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.

(6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.
(7) The common-law writ of capias has heretofore been issuable.
(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.
(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings."

SECTION.3. This act is effective when it becomes law.

SENATE BILL 910:
Failure to Appear for Misdemeanor Citation

BILL ANALYSIS

Committee:	House Judicisry I	**Introduced by:**	Senator Rand
Date:	May 8, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 910 allows a court to issue an order for arrest when a defendant fails to appear in court after receiving a misdemeanor citation.***

CURRENT LAW: There is no clearly spelled out means by which a judge could issue an order for arrest for a cited individual's failure to appear on a uniform citation (ticket) issued by a law enforcement officer. Since a law enforcement officer is not a judicial officer, the normal mechanisms to command compliance with judicial process and directives do not apply. Where a defendant fails to appear for such matters the case is procedurally returned to the clerk of court's office where it remains in a form of limbo. The defendant is not cleared of the charge, but faces no real sanction to spur a voluntary return to court, unless a criminal summons is issued or a warrant is sworn out for the defendant's arrest.

BILL ANALYSIS: This bill clarifies that an order for arrest may be issued for a defendant's failure to appear in court as directed by a citation for a misdemeanor. G.S. 15A-305 (Orders for Arrest) is amended to provide that an order for arrest may be issued when the defendant fails to appear in court as required by a uniform citation issued by a law enforcement officer.

This bill is effective when it becomes law.

**This summary was modified from a summary by Al Andrews.*

Relevant Statutes

§ 15A-302. Citation.

(a) Definition. - A citation is a directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.

(b) When Issued. - An officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.

(c) Contents. - The citation must:

(1) Identify the crime charged, including the date, and where material, identify the property and other persons involved,

(2) Contain the name and address of the person cited, or other identification if that cannot be ascertained,

(3) Identify the officer issuing the citation, and

(4) Cite the person to whom issued to appear in a designated court, at a designated time and date.

(d) Service. - A copy of the citation shall be delivered to the person cited who may sign a receipt on the original which shall thereafter be filed with the clerk by the officer. If the cited person refuses to sign, the officer shall certify delivery of the citation by signing the original, which shall thereafter be filed with the clerk. Failure of the person cited to sign the citation shall not constitute grounds for his arrest or the requirement that he post a bond. When a citation is issued for a parking offense, a copy shall be delivered to the operator of a vehicle who is present at the time of service, or shall be delivered to the registered owner of the vehicle if the operator is not present by affixing a copy of the citation to the vehicle in a conspicuous place.

(e) Dismissal by Prosecutor. - If the prosecutor finds that no crime or infraction is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) Citation No Bar to Criminal Summons or Warrant. - If the offense is a misdemeanor, a criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense.

(g) Preparation of Form. - The form and content of the citation is as prescribed by the Administrative Officer of the Courts. The form of citation used for violation of the motor vehicle laws must contain a notice that the driving privilege of the person cited may be revoked for failure to appear as cited, and must

(1973, c. 1286, s. 1; 1975, c. 166, ss. 3, 27; 1983, c. 327, s. 4; 1985, c. 385; c. 764, s. 4; 1989, c. 243, s. 1.)

§ 15A-305. Order for arrest.

(a) Definition. - As used in this section, an order for arrest is an order issued by a justice, judge, clerk, or magistrate that a law-enforcement officer take a named person into custody.

(b) When Issued. - An order for arrest may be issued when:

(1) A grand jury has returned a true bill of indictment against a defendant who is not in custody and who has not been released from custody pursuant to Article 26 of this Chapter, Bail, to answer to the charges in the bill of indictment.

(2) A defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required.

(3) The defendant has failed to appear as required by a duly executed criminal summons issued pursuant to G.S. 15A-303.

(4) A defendant has violated the conditions of probation.

(5) In any criminal proceeding in which the defendant has become subject to the jurisdiction of the court, it becomes necessary to take the defendant into custody.

(6) It is authorized by G.S. 15A-803 in connection with material witness proceedings.

(7) The common-law writ of capias has heretofore been issuable.

(8) When a defendant fails to appear as required in a show cause order issued in a criminal proceeding.

(9) It is authorized by G.S. 5A-16 in connection with contempt proceedings.

(c) Statement of Cause and Order; Copy of Indictment. -

(1) The process must state the cause for its issuance and order an officer described in G.S. 15A-301(b) to take the person named therein into custody and bring him before the court. If the defendant is to be held without bail, the order must so provide.

(2) When the order is issued pursuant to subdivision (b)(1), a copy of the bill of indictment must be attached to each copy of the order for arrest.

(d) Who May Issue. - An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest.

(1973, c. 1286, s. 1; 1975, c. 166, s. 6; 1977, c. 711, s. 21.)

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 910 A BILL TO BE ENTITLED AN ACT TO ALLOW THE COURT TO ISSUE AN ORDER FOR ARREST WHEN A DEFENDANT FAILS TO APPEAR IN COURT AFTER RECEIVING A CITATION FOR A MISDEMEANOR

☒ 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 (# 2), which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (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 2

SENATE BILL 931
Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Capital Case/Judge Oversee Discovery. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A JUDGE TO CONDUCT OVERSIGHT OF THE DISCOVERY PROCESS IN A CAPITAL CASE TO ENSURE COMPLIANCE WITH CONSTITUTIONAL AND STATUTORY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-911. Judicial oversight of discovery – capital cases.**

(a) Application of Section. – This section applies to cases in which the defendant is charged with first degree murder and the State is seeking the death penalty.

(b) Review of State's Evidence. – Upon timely motion of the State or the defendant and at least 10 days before the beginning of a capital trial, a superior court judge shall conduct an in camera recorded hearing with the State to determine whether the State has complied with the provisions of this Article and any constitutional obligations to provide discovery to the defendant. At the hearing the State shall provide the judge with a copy of all material in the possession of the prosecutor, other than the State's work product, that the State has not provided to the defendant. After reviewing the materials, if the judge finds that part or all of the information is discoverable under this Article or the United States Constitution or the North Carolina Constitution, the judge shall order the State to provide part or all of the information to the defendant within time limitations set by the judge. Information that the judge determines is not discoverable shall be sealed and placed in the court file for appellate review."

SECTION 2. This act becomes effective December 1, 2001.

SENATE BILL 931:
Capital Case/Judge Oversee Discovery

BILL ANALYSIS

Committee:	House Judicisry I	**Introduced by:**	Senator Rand
Date:	May 8, 2001	**Summary by:**	Al Andrews, Staff Attorney Susan L. Sitze, Committee Counsel
Version:	2nd Edition		

SUMMARY: Senate Bill 931 requires a judge to conduct oversight of the discovery process in a capital case to ensure compliance with constitutional and statutory law.

BILL ANALYSIS: The bill provides that upon motion by the State or the defendant prior to the commencement of a capital trial, a superior court judge shall conduct an in camera hearing to determine whether the prosecution has complied with statutes and Constitutional requirements for providing discovery to the defendant. The judge will review the entire file, other than the State's work product, and make an order, if necessary, that appropriate discovery be provided to the defendant. All materials adjudged nondiscoverable will be sealed and placed in the case file for appellate review.

Effective Date: December 1, 2001.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 931 A BILL TO BE ENTITLED AN ACT TO REQUIRE A JUDGE TO CONDUCT OVERSIGHT OF THE DISCOVERY PROCESS IN A CAPITAL CASE TO ENSURE COMPLIANCE WITH CONSTITUTIONAL AND STATUTORY 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 (# 2), which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (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 1

SENATE BILL 1004

Short Title:	Interfere w/ Emergency Communication.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-286.2 reads as rewritten:

"**§ 14-286.2. Interfering with emergency communication.**

(a) Offense. – A person who, without authorization, intentionally interferes with an emergency ~~radio~~ communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a ~~misdemeanor and is punishable by:~~

~~(1) Class 1 misdemeanor if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars ($1,000) occurs; or~~

~~(2) Class 2 misdemeanor if a result described in subdivision (1) does not occur.~~Class A1 misdemeanor.

~~(b) "Emergency Communication" Defined. – As used in this section, the term "emergency communication" means a communication not governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage.~~

(b1) Definitions. – The following definitions apply in this section:

(1) Emergency communication. – The term includes communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is or is reasonably believed to be, or reasonably believes himself or another person to be, in imminent danger of bodily injury, or that an individual

reasonably believes that his property or the property of another is in imminent danger of substantial damage, injury, or theft.

(2) Intentional interference. – The term includes forcefully removing a communications instrument or other emergency equipment from the possession of another, hiding a communications instrument or other emergency equipment from another or otherwise making a communications instrument or other emergency equipment unavailable to another, disconnecting a communications instrument or other emergency equipment, removing a communications instrument from its connection to communications lines or wavelengths, damaging or otherwise interfering with communications equipment or connections between a communications instrument and communications lines or wavelengths, providing false information to cancel an earlier call or otherwise falsely indicating that emergency assistance is no longer needed when it is, and any other type of interference that makes it difficult or impossible to make an emergency communication or that conveys a false impression that emergency assistance is unnecessary when it is needed."

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

SENATE BILL 1004:
Interfere with Emergency Communications

BILL ANALYSIS

Committee:	House Judicisry I	**Introduced by:**	Senator Rand
Date:	May 8, 2001	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 1004 amends the law regarding interference with emergency communications and increases the punishment to a Class A1 misdemeanor.

CURRENT LAW: A person who intentionally interferes with emergency radio communications is now punished as a Class 1 misdemeanant if, as a result of the interference, serious bodily injury or property damage in an amount over a $1,000 occurs, or is punished as a Class 2 misdemeanant if a lesser injury or damage amount occurs.

BILL ANALYSIS: The bill redefines "emergency communications" giving it a broad definition. The bill also defines "intentional interference" to include the removal, hiding, tampering with, damaging, disconnecting, or making unavailable of a communications instrument or emergency instrument. The definition also includes providing false information to cancel or otherwise indicate that assistance is no longer needed when it in fact is needed. The bill provides that anyone intentionally interfering with emergency communications will be punished as a Class A1 misdemeanant regardless of the amount of damage done by the interference.

Effective Date: Becomes effective December 1, 2001, and applies to offense committed on or after that date.

**Modified from a summary by Al Andrews.*

Relevant Statutes

§ 14-286.2. Interfering with emergency communication.

(a) Offense. - A person who, without authorization, intentionally interferes with an emergency radio communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a misdemeanor and is punishable by:

(1) Class 1 misdemeanor if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars ($1,000) occurs; or

(2) Class 2 misdemeanor if a result described in subdivision (1) does not occur.

(b) "Emergency Communication" Defined. - As used in this section, the term "emergency communication" means a communication not governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage.

(1987, c. 690, s. 1; 1993, c. 539, s. 184; 1994, Ex. Sess., c. 24, s. 14(c).)

House Judiciary I Committee

May 10, 2001

Minutes

The House Judiciary I Committee met on Thursday, March 1, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Dan Blue called the meeting to order and the following members were present: Representatives Alexander, Blust, Clary, Insko, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Rand was recognized for a continuation of discussion of Senate Bill 1004, AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE, (Attachment III). The bill was explained during the May 8, 2001 meeting of the Committee and was displaced to allow time to draft language that was suggested during that discussion. A proposed House Committee Substitute was distributed, (Attachment IV).

Representative Sutton moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Senator Rand stated that the words "without authorization" were removed from line 8 of page one. He then noted that an amendment had been prepared to add the language "disabling a theft-prevention alarm system, (Attachment V).

Representative Sutton moved adoption of the amendment. The motion carried, and the amendment was adopted.

Representative Sutton moved that the amendment be rolled into a new committee substitute, that the committee substitute be given a favorable report, and that the original bill be given an unfavorable report. The motion carried, (Attachment VI). A copy of the committee substitute is attached, (Attachment VII).

Senator Charles Carter was recognized for an explanation of Senate Bill 739, AN ACT TO EXTEND PRIVILEGED COMMUNICATIONS PROTECTION IN DOMESTIC ACTIONS TO LICENSED PSYCHOLOGICAL ASSOCIATED AND LICENSED CLINICAL SOCIAL WORKERS, (Attachment VIII). A proposed House Committee Substitute was distributed, (Attachment IX).

Representative Blust moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Senator Carter stated that the committee substitute made technical corrections to the original bill that would provide that licensed psychological associates and licensed clinical social workers are not

competent to testify in certain domestic actions between parties to whom they have provided marriage counseling.

Mr. Rick Zechini, Committee Counsel, gave further explanation of the bill. A bill analysis, prepared by Mr. Zechini, is attached to the minutes, (Attachment X).

Ms. Jennifer Sullivan, National Association of Social Workers, responded to questions.

Representative Insko offered an amendment, (Attachment XI), to reflect a title change in the bill, and moved its adoption. The amendment was adopted.

Representative Sutton moved a favorable report for a House Committee Substitute, incorporating the amendment, and an unfavorable report for the Senate Committee Substitute. The motion carried, (Attachment XII). A copy of the House Committee Substitute is attached, (Attachment XIII)

Senator Wellons was recognized for an explanation of Senate Bill 936. AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING, (Attachment XIV). Senator Wellons said that the bill would amend the sex offender registration statutes to comply with federal law requiring sexual offender registry mandatory for life, and to maintain funding eligibility under the Byrne Grant.

Ms. Susan Sitze, Committee Counsel, was recognized for further explanation. Ms. Sitze outlined the changes created by the legislation. She noted that the bill addresses the issues of federal law that the state is not currently in compliance with. Ms. Sitze said that currently, North Carolina law requires all people who commit one of our listed sex offenses, to register for at least 10 years. Those classified as a sexually violent predator are required to register for lifetime, with a current provision that allows them to petition to be removed from the list after ten years. The bill would remove the ability to petition for removal from the list. The bill also adds two new classes of offenders – those who are recidivists and those who commit aggravated offenses, who must register for life rather than the 10-year period of time. In addition, non-resident students and non-resident workers who are living in North Carolina for a period of time will be required to register in the county in which they are temporarily residing. Additional information is found in the bill analysis prepared by Ms. Sitze, (Attachment XV.

Mr. John Aldridge, Office of the Attorney General, commented briefly on the bill.

Representative Clary commended the Attorney General's office regarding the online sex offender registry.

Representative Blue asked what happens when an executive pardon occurs.

Mr. Aldridge replied that a pardon has no effect on an offender's subject to registration.

Representative Blue asked what happens when a pardon of innocence occurs.

Mr. Aldridge replied that a pardon of innocence is not specified in the law.

Representative Blue expressed support for registration of offenders, but noted that persons who have been found innocent should not have this registration follow them for life.

The bill was displaced to allow time for an amendment to be prepared to insure that one who is found innocent would not be subject to lifetime registration.

The meeting adjourned at 10:50 a.m.

Representative Dan Blue
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MAY 10, 2001
10:00 A.M.

AGENDA

SENATE BILL 739 – PSYCHOLOGICAL ASSOCIATES/CLINICAL WORKER PRIVILEGE
SENATOR CHARLES CARTER

SENATE BILL 936 – SEX OFFENDER REGISTRATION/CONFORM WITH FEDERAL LAW
SENATOR ALLEN WELLONS

SENATE BILL 1004 – INTERFERE WITH EMERGENCY COMMUNICA TION
SENATOR TONY RAND

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 10, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Crome	NCATL
Andy Bement	NCLM
Eric Rudolph	Cherokee Chamber of Commerce
Lee Rupert	CYPC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 1004

Short Title:	Interfere w/ Emergency Communication.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-286.2 reads as rewritten:

"**§ 14-286.2. Interfering with emergency communication.**

(a) Offense. – A person who, without authorization, intentionally interferes with an emergency ~~radio~~ communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a ~~misdemeanor and is punishable by:~~

~~(1) Class 1 misdemeanor if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars ($1,000) occurs; or~~

~~(2) Class 2 misdemeanor if a result described in subdivision (1) does not occur.~~ Class A1 misdemeanor.

~~(b) "Emergency Communication" Defined. As used in this section, the term "emergency communication" means a communication not governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage.~~

(b1) Definitions. – The following definitions apply in this section:

(1) Emergency communication. – The term includes communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is or is reasonably believed to be, or reasonably believes himself or another person to be, in imminent danger of bodily injury, or that an individual

reasonably believes that his property or the property of another is in imminent danger of substantial damage, injury, or theft.

(2) Intentional interference. – The term includes forcefully removing a communications instrument or other emergency equipment from the possession of another, hiding a communications instrument or other emergency equipment from another or otherwise making a communications instrument or other emergency equipment unavailable to another, disconnecting a communications instrument or other emergency equipment, removing a communications instrument from its connection to communications lines or wavelengths, damaging or otherwise interfering with communications equipment or connections between a communications instrument and communications lines or wavelengths, providing false information to cancel an earlier call or otherwise falsely indicating that emergency assistance is no longer needed when it is, and any other type of interference that makes it difficult or impossible to make an emergency communication or that conveys a false impression that emergency assistance is unnecessary when it is needed."

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 1004
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1004-CSSO-38 [v.1]

5/9/2001 4:21:27 PM

Short Title: Interfere w/ Emergency Communication. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-286.2 reads as rewritten:

"**§ 14-286.2. Interfering with emergency communication.**

(a) Offense. – A person ~~who, without authorization,~~ who intentionally interferes with an emergency ~~radio~~ communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a Class A1 misdemeanor. In addition, a person who interferes with a communications instrument or other emergency equipment with the intent to prevent an emergency communication is guilty of a Class A1 misdemeanor. ~~misdemeanor and is punishable by:~~

~~(1) Class 1 misdemeanor if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars ($1,000) occurs; or~~

~~(2) Class 2 misdemeanor if a result described in subdivision (1) does not occur.~~

~~(b) "Emergency Communication" Defined. As used in this section, the term "emergency communication" means a communication not governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage.~~

(b1) Definitions. – The following definitions apply in this section:

(1) Emergency communication. – The term includes communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is or is

reasonably believed to be, or reasonably believes himself or another person to be, in imminent danger of bodily injury, or that an individual reasonably believes that his property or the property of another is in imminent danger of substantial damage, injury, or theft.

(2) Intentional interference. – The term includes forcefully removing a communications instrument or other emergency equipment from the possession of another, hiding a communications instrument or other emergency equipment from another or otherwise making a communications instrument or other emergency equipment unavailable to another, disconnecting a communications instrument or other emergency equipment, removing a communications instrument from its connection to communications lines or wavelengths, damaging or otherwise interfering with communications equipment or connections between a communications instrument and communications lines or wavelengths, providing false information to cancel an earlier call or otherwise falsely indicating that emergency assistance is no longer needed when it is, and any other type of interference that makes it difficult or impossible to make an emergency communication or that conveys a false impression that emergency assistance is unnecessary when it is needed."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. S1004-CSSO-38 [v. 1]

H. B. No. _____ DATE May 10, 2001

S. B. No. 1004 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line ~~15~~ 13

( ) WHICH CHANGES THE TITLE

by ~~adding between the words~~ rewriting the line to read:

"wavelengths, disabling ~~an alarm system~~ a theft-prevention alarm system, providing false information to cancel an earlier call or"

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 1004 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT 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 HOUSE committee substitute bill (#),-☐ ~~which changes the title,~~ unfavorable as to (original bill) ~~(Committee Substitute Bill # 1), (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 D

SENATE BILL 1004
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1004-PCS3461-SO-38

Short Title: Interfere With Emergency Communication. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING INTERFERENCE WITH EMERGENCY COMMUNICATIONS AND TO INCREASE THE CRIMINAL PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-286.2 reads as rewritten:

"**§ 14-286.2. Interfering with emergency communication.**

(a) Offense. – A person ~~who, without authorization,~~ who intentionally interferes with an emergency ~~radio~~ communication, knowing that the communication is an emergency communication, and who is not making an emergency communication himself, is guilty of a Class A1 misdemeanor. In addition, a person who interferes with a communications instrument or other emergency equipment with the intent to prevent an emergency communication is guilty of a Class A1 misdemeanor. ~~misdemeanor and is punishable by:~~

~~(1) Class 1 misdemeanor if, as a result of the interference, serious bodily injury or property damage in excess of one thousand dollars ($1,000) occurs; or~~

~~(2) Class 2 misdemeanor if a result described in subdivision (1) does not occur.~~

~~(b) "Emergency Communication" Defined. As used in this section, the term "emergency communication" means a communication not governed by Federal law relating that an individual is or is reasonably believed to be in imminent danger of serious bodily injury or that property is or is reasonably believed to be in imminent danger of substantial damage.~~

(b1) Definitions. – The following definitions apply in this section:

(1) Emergency communication. – The term includes communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is or is reasonably believed to be, or reasonably believes himself or another

person to be, in imminent danger of bodily injury, or that an individual reasonably believes that his property or the property of another is in imminent danger of substantial damage, injury, or theft.

(2) Intentional interference. – The term includes forcefully removing a communications instrument or other emergency equipment from the possession of another, hiding a communications instrument or other emergency equipment from another, or otherwise making a communications instrument or other emergency equipment unavailable to another, disconnecting a communications instrument or other emergency equipment, removing a communications instrument from its connection to communications lines or wavelengths, damaging or otherwise interfering with communications equipment or connections between a communications instrument and communications lines or wavelengths, disabling a theft-prevention alarm system, providing false information to cancel an earlier call or otherwise falsely indicating that emergency assistance is no longer needed when it is, and any other type of interference that makes it difficult or impossible to make an emergency communication or that conveys a false impression that emergency assistance is unnecessary when it is needed."

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 2

SENATE BILL 739
Judiciary I Committee Substitute Adopted 4/9/01

Short Title: Psych. Assoc./Clinical Social Worker Privilege. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO EXTEND PRIVILEGED COMMUNICATIONS PROTECTION IN DOMESTIC ACTIONS TO LICENSED PSYCHOLOGICAL ASSOCIATES AND LICENSED CLINICAL SOCIAL WORKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-53.6 reads as rewritten:

"**§ 8-53.6. No disclosure in alimony and divorce actions.**

In an action pursuant to G.S. ~~50-5,~~ 50-5.1, 50-6, 50-7, ~~50-16.2~~ 50-16.2A and ~~50-16.3~~ 50-16.3A if either or both of the parties have sought and obtained marital counseling by a licensed physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, or certified marital family therapist, the person or persons rendering such counseling shall not be competent to testify in the action concerning information acquired while rendering such counseling."

SECTION 2. This act becomes effective October 1, 2001, and applies to information acquired on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 739

Judiciary I Committee Substitute Adopted 4/9/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S739-CSSG-16 [v.2]

5/10/2001 8:51:46 AM

Short Title: Psych. Assoc./Clinical Social Worker Privilege. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO EXTEND PRIVILEGED COMMUNICATIONS PROTECTION IN DOMESTIC ACTIONS TO LICENSED PSYCHOLOGICAL ASSOCIATES AND LICENSED CLINICAL SOCIAL WORKERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-53.6 reads as rewritten:

"**§ 8-53.6. No disclosure in alimony and divorce actions.**

In an action pursuant to G.S. ~~50-5,~~ 50-5.1, 50-6, 50-7, ~~50-16.2~~ 50-16.2A and ~~50-16.3~~ 50-16.3A if either or both of the parties have sought and obtained marital counseling by a licensed physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, or ~~certified marital family therapist,~~ licensed marriage and family therapist, the person or persons rendering such counseling shall not be competent to testify in the action concerning information acquired while rendering such counseling."

SECTION 2. G.S. 8-53.7 reads as rewritten:

"**§ 8-53.7. Social worker privilege.**

No person engaged in delivery of private social work services, duly certified pursuant to Chapter 90B of the General Statutes shall be required to disclose any information which he or she may have acquired in rendering professional social services, and which information was necessary to enable him or her to render professional social services: provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by G.S. 8-53.6 or any other statute or regulation."

SECTION 3. This act becomes effective October 1, 2001, and applies to information acquired on or after that date.

SENATE BILL 739:
Psych. Assoc./Clinical Social Worker Privilege

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Carter
Date:	May 10, 2001	**Summary by:**	Rick Zechini
Version:	Proposed Committee Substitute to the Second Edition		Committee Counsel

SUMMARY: ***The proposed committee substitute to Senate Bill 739 provides that licensed psychological associates and licensed clinical social workers are not competent to testify in certain domestic actions between parties to whom they have provided marriage counseling.***

CURRENT LAW: G.S. 8-53.6 provides that a licensed physician, licensed psychologist, and certified marital counselor are not competent to testify in a divorce or alimony action if either or both of the parties to the action have obtained marital counseling from that person or persons. This prohibition applies only to the information acquired while rendering the marital counseling.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 739 would extend this prohibition to licensed psychological associates and licensed clinical social workers who have provided marital counseling to one or both of the parties to a separation, divorce or alimony action.

To be licensed as a licensed clinical social worker, an individual must have a masters or doctoral degree in social work, at least two years of clinical social work experience with appropriate supervision, and must have passed an examination administered by the North Carolina Social Work Certification and Licensure Board. An individual may be licensed as a licensed psychological associate upon obtaining a master's degree in psychology and passing an examination administered by the North Carolina Psychology Board.

The proposed committee substitute would also make technical changes to the statutes. Several of the divorce and alimony statutes referred to in G.S. 8-53.6 have been repealed and replaced since it was enacted. The proposed committee substitute would change the citations to reflect the current divorce and alimony statutes. In addition, a conforming change is made to G.S. 8-53.7.

BACKGROUND: When G.S. 8-53.6 was originally enacted in 1983, social workers were not licensed by the State. Since that time, the State began licensing clinical social workers, and both licensed clinical social workers and licensed psychological associates provide counseling to persons experiencing marital problems.

EFFECTIVE DATE: The act would become effective October 1, 2001, and would apply to information acquired on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XI**

(Please type or use ballpoint pen)

EDITION No. PCS

~~H. B. No.~~ _____

S. B. No. 739

COMMITTEE SUBSTITUTE _____

DATE 5/10/01

Amendment No. 1
(to be filled in by Principal Clerk)

Rep.) ~~Sen.~~) ~~Begi~~ INSKO

1 moves to amend the bill on page 1, line 3-4

2 ( ) WHICH CHANGES THE TITLE

3 by Rewrite the lines to Read:

4 "DOMESTIC ACTIONS TO LICENSED,

5

6 PSYCHOLOGICAL ASSOCIATES, LICENSED

7

8 CLINICAL SOCIAL WORKERS, AND

9

10 LICENSED MARRIAGE AND FAMILY

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12 THERAPISTS."

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SIGNED Ursla Insko

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 739 A BILL TO BE ENTITLED AN ACT TO EXTEND PRIVILEGED COMMUNICATIONS PROTECTION IN DOMESTIC ACTIONS TO LICENSED PSYCHOLOGICAL ASSOCIATES AND LICENSED CLINICAL SOCIAL WORKERS.

☐ 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 # 1), (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 D

SENATE BILL 739
Judiciary I Committee Substitute Adopted 4/9/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S739-PCS7231-SG-16

Short Title: Psych. Assoc./Clinical Social Worker Privilege. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO EXTEND PRIVILEGED COMMUNICATIONS PROTECTION IN DOMESTIC ACTIONS TO LICENSED PSYCHOLOGICAL ASSOCIATES, LICENSED CLINICAL SOCIAL WORKERS, AND LICENSED MARRIAGE AND FAMILY THERAPISTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-53.6 reads as rewritten:

"**§ 8-53.6. No disclosure in alimony and divorce actions.**

In an action pursuant to G.S. ~~50-5,~~ 50-5.1, 50-6, 50-7, ~~50-16.2~~ 50-16.2A, and ~~50-16.3~~ 50-16.3A if either or both of the parties have sought and obtained marital counseling by a licensed physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, or ~~certified marital family therapist,~~ licensed marriage and family therapist, the person or persons rendering such counseling shall not be competent to testify in the action concerning information acquired while rendering such counseling."

SECTION 2. G.S. 8-53.7 reads as rewritten:

"**§ 8-53.7. Social worker privilege.**

No person engaged in delivery of private social work services, duly certified pursuant to Chapter 90B of the General Statutes shall be required to disclose any information which he or she may have acquired in rendering professional social services, and which information was necessary to enable him or her to render professional social services: provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by G.S. 8-53.6 or any other statute or regulation."

SECTION 3. This act becomes effective October 1, 2001, and applies to information acquired on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 936

Judiciary I Committee Substitute Adopted 4/16/01

Short Title: Sex Offender Reg/Conform W/Fed Law. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'Aggravated offense' means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal penile penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal penile penetration with a victim who is less than 12 years old.

~~(1a)~~(1b) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1b)~~(1c) 'Division' means the Division of Criminal Statistics of the Department of Justice.

~~(1c)~~(1d) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1e) 'Nonresident student' means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a full-time basis.

(1f) 'Nonresident worker' means a person who is not a resident of North Carolina but who has full-time or part-time employment in the State, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

person's life. The requirement of registration shall not be terminated under any circumstances."

SECTION 9. G.S. 14-208.24 reads as rewritten:

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section."

SECTION 10. G.S. 14-208.25 is repealed.

SECTION 11. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 936: Sex Offender Registration/Conform with Federal Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Wellons
Date:	May 10, 2001	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 936 amends the sex offender registration statutes to comply with federal law and to maintain funding eligibility under the Byrne Grant.

BILL ANALYSIS: Senate Bill 936 amends Article 27A of Chapter 14, which deals with sex offender registration programs. The bill adds two new classes of offenders, those who are recidivists and those who commit aggravated offenses, who must register for life rather than the 10-year period of time.

The bill defines "aggravated offense" to be a criminal sexual act involving vaginal penile penetration with a victim of any age through the use of force or threat of violence, or involving vaginal penile penetration with a victim who is less than 12 years old. It defines "recidivist" as one who has a prior conviction requiring sex offender registration.

The bill requires a person who is a nonresident student or nonresident worker in this State to register in the county where the person attends school or works as appropriate.

The bill also requires a sheriff who receives notice from a registrant that the registrant is moving to another state to provide the registrant with notice that they must comply with the new state of residence's registration requirements. The sheriff must also provide the registrant's new address to the Division of Criminal Statistics of the Department of Justice, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

G.S. 14-208.20 provides that, prior to sentencing, a study shall be conducted of the defendant by a board of experts selected by the Department of Correction to determine whether a person is a sexually violent predator. The bill expands this board of experts from two to four. The two new additional members are to be selected by the Department of Correction; one must be a victims' right advocate and one must be a representative of law enforcement agencies.

The bill repeals the statutory provisions that allow a person required to register for lifetime to petition the court to have their names removed from the sexual offender registry after 10 years of good behavior and provides that under no circumstances can the person's name be removed from the registry for the person's lifetime.

The bill clarifies that a person residing in North Carolina who was convicted in a military court of a sex offense must comply with the State's registration requirements.

*Emily Johnson and Al Andrews substantially contributed to this summary

House Judiciary I Committee

May 15, 2001

Minutes

The House Judiciary I Committee met on Tuesday, May 15, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Martha Alexander, on behalf of Senator Clodfelter, was recognized to explain Senate Bill 626 AN ACT ESTABLISHING A PILOT PROGRAM TO REVIEW DOMESTIC VIOLENCE FATALITIES, (Attachment III). The bill would establish a pilot program to review domestic violence fatalities in Mecklenburg County and another county with a population of less than 75,000 people to be determined by the Governor's Commission on Domestic Violence. She said the bill would create a multi-disciplinary fatality review team comprised of no more than 10 people to be appointed by the local Board of County Commissioners. The team's job would be to identify and review domestic violence related deaths of victims 18 years of age, or older, after the District Attorney has certified that any criminal investigation or court action involving the case is complete. The review team would make recommendations to the appropriate agencies for the prevention of future domestic violence fatalities.

Ms. Susan Sitze, Committee Counsel, was recognized for further explanation. Ms. Sitze pointed out that a lead agency would be designated to act as staff to the review team and that identifying information would be removed from the records. Addition explanation is found in her bill analysis, (Attachment IV).

Representative Alexander offered an amendment, (Attachment V), and moved its adoption. The amendment would make the regular meetings of the review team not subject to the open meetings law.

Representative Arnold asked why the bill addressed only those persons 18 years of age or older.

Ms. Sitze replied that the Child Fatality Task Force is already addressing domestic violence fatalities of persons under the age of 18.

The amendment was adopted.

Representative Blue said that he felt the bill should to be a statewide bill in order to provide a broad array of data to determine how to more aggressively identify some of the causes of domestic violence. He also asked what currently would prevent a District Attorney and the County Commissioners from jointly creating such a review team without this bill.

Chairman Hackney noted that the bill would create protections and rules similar to those given to the Child Fatality Task Force that they would not have without the bill.

Representative Alexander moved that the amendment be rolled into a House committee substitute, that it be given a favorable report, and that the Senate bill be given an unfavorable report. The motion carried, (Attachment VI). A copy of the House Committee Substitute is attached, (Attachment VII).

Senator Odom was recognized for an explanation of Senate Bill 300, AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION, (Attachment VIII). A proposed House Committee Substitute was distributed, (Attachment IX). Representative Blue moved that it be adopted for the purpose of discussion. The motion carried.

Senator Odom said that the bill resulted from recommendations from the Legislative Disaster Response and Recovery Commission and rewrites the Emergency Management Act to give some logic as to how disasters are classified and the types of help that would be available. He said that the bill also addresses those small disasters that may not come under a presidential-declared disaster plan, and would provide, if the General Assembly appropriates the funds, some relief in those instances. Senator Odom discussed the disaster tiers that are created by the bill. These are further explained in the bill analysis prepared by Mr. Rick Zechini, Committee Counsel, (Attachment X).

Mr. Zechini was recognized to explain the changes in the proposed House Committee Substitute. He said that many of the changes in the committee substitute were technical in nature. He pointed out that the bill would allow that the governor would no longer need approval from the Council of State to use contingency and emergency funds. He also discussed the type of assistance that would be made available.

Representative Blue asked if the bill would give the governor absolute power over the rainy-day fund or any other reserve fund that the state may have.

Senator Odom replied that there is on-going legal debate regarding whether the governor can or cannot use any of the rainy-day fund without direct approval by the General Assembly. He said that the bill would give the governor the same powers that he currently has for an emergency that has been declared, but did not comment on whether it would extend to the rainy-day fund.

Mr. Eric Tolbert, Crime Control and Public Safety, Division of Emergency Management, was recognized to comment on the bill. He said that the bill would establish some consistency and legislative guidelines as to how to implement disaster relief, especially in those cases that are below a federal threshold for assistance.

Mr. Lynn Muchmore, Fiscal Research Division, was recognized and commented briefly.

Representative Arnold moved a favorable report the House Committee Substitute, and an unfavorable report for the Senate bill.

Chairman Hackney noted that the effective date should be amended to include payments that have not yet been made for some past disaster.

Representative Arnold offered an amendment, (Attachment XI), to amend the effective date. The amendment was adopted.

Representative Arnold offered a substitute motion for a favorable report for a new House Committee Substitute, incorporating the amendment and an unfavorable report to the Senate bill. The motion carried, (Attachment XII). The House Committee Substitute is attached, (Attachment XIII).

The meeting was adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MAY 15, 2001
10:00 A.M.

AGENDA

SENATE BILL 300 - AMEND NC EMERGENCY MANAGEMENT LAWS
SENATOR FOUNTAIN ODOM

SENATE BILL 626 - DOMESTIC VIOLENCE FATALITY REVIEW TEAM
SENATOR DAN CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — **May 15, 2001**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary McLeod	CCPS
Douglas P. Hopper	NC Emergency Management Assoc.
Eric Tolbert	CCPS-EM
Don Needham	CCPS-EM
Libby Smith	CCPS-EM
Chris Coudriet	CCPS-EM
Thad Bryson	CCPS-EM
Doug Hoyle	CCPS-EM
Billy R. Cameron	CCPS
Katherine Davis	Electricities
Mary Carmichael	RCBIC
Jim Blackburn	NC Assn of County Commissioners
Mark Ezzell	GCC
Terrence E. Bond II MD	Lumberton Surgical Associates
Brian Francis	Meck Cnty
BRUCE THOMPSON	PARKER POE ADAMS + BERNSTEIN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 626

Judiciary I Committee Substitute Adopted 4/25/01

Short Title: Domestic Violence Fatality Review Team. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PILOT PROGRAM TO REVIEW DOMESTIC VIOLENCE FATALITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Domestic Violence Fatality Review Team. – A county may establish a multidisciplinary domestic violence fatality review team to identify and review domestic violence related deaths, including homicides and suicides, and to facilitate communication among the various agencies and organizations involved in domestic violence cases to prevent future fatalities.

SECTION 1.(b) Definitions. – The following definitions apply in this act:

(1) Domestic violence fatality. – The death of a person that is the result of an act of domestic violence as defined in G.S. 50B-1.

(2) Review team. – The Domestic Violence Fatality Review Team.

SECTION 1.(c) Composition. – The Review Team shall consist of a lead agency, selected by the local board of county commissioners, and no more than 10 members, representing:

(1) A representative from a victim's services group.

(2) An attorney from the local district attorney's office.

(3) Local law enforcement personnel.

(4) A local elected official.

(5) A local attorney who represents victims of domestic violence.

(6) A local attorney who represents alleged perpetrators of domestic violence.

(7) A magistrate.

(8) A representative from an emergency services provider.

(9) A survivor of domestic violence.

(10) A representative of a local human services agency.

SECTION 1.(d) Powers and duties of lead agency. – To accomplish the purposes of this act, the lead agency shall:

(1) Contact the individuals, agencies, or organizations to establish member assignments.
(2) Ensure the development of written operating procedures to govern the Review Team.
(3) Maintain records of and establish procedures for conducting team meetings, including scheduling meetings, notifying team members of the meetings, locating meeting places, preparing agendas, and recording meeting minutes.
(4) Designate cases for review.
(5) Collect, distribute, and maintain records and data used by team members related to domestic violence fatalities in the county.
(6) Distribute case records to team members, after redacting all identifying information from the records and data.
(7) Provide structured training and education for team members on domestic violence related topics.
(8) Compile and submit reports of Review Team activities as required by the Governor's Commission on Domestic Violence.

SECTION 1.(e) Responsibilities of Review Team. – The Review Team shall:

(1) Assist the lead agency in developing the written operating procedures that shall govern the Review Team.
(2) Identify methods to collect, analyze, and maintain data related to domestic violence fatalities in the county.
(3) Develop an understanding of the causes and effects of domestic violence and a familiarity with the services currently available in the community that address domestic violence issues.
(4) Identify areas where local government, law enforcement agencies, medical and mental health providers, and other local advocacy agencies may increase victim safety, increase public awareness, and provide the public with education and training in domestic violence related issues.
(5) Recommend action to the appropriate agencies for the prevention of future domestic violence fatalities.

SECTION 1.(f) Responsibilities of Team Members. – Individual team members are responsible for reviewing the facts and circumstances of fatalities that occur as a result of domestic violence. The team member shall review domestic violence fatalities of victims who were 18 years of age or older and all relevant historical data of the victim during the course of the victim's intimate relationship with the perpetrator of the crime. After reviewing a case, the team member shall share his or her findings with other team members to enable the Review Team to recommend the appropriate action to the local agencies or organizations. However, no member of the Review Team shall review a domestic violence fatality case while the case is under investigation by law enforcement personnel or an action is pending in criminal or civil court. A team member may review a domestic violence fatality case only after a local district attorney

has signed off on the case ensuring that any investigation or court action involving the case has been completed.

SECTION 1.(g) Access to Records. – The Review Team, during its existence, shall have access to all medical records, hospital records, and records maintained by the county or any local agency as necessary to carry out the purposes of this act, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. All of these records shall be released to the lead agency, who shall redact all identifying information from the records before distributing copies to the team members. The lead agency shall maintain one complete set of un-redacted records in each case file. The Review Team shall not, as part of the reviews authorized under this act, contact, question, or interview the parent of the victim or the alleged perpetrator or any other family member of the victim or alleged perpetrator whose record is being reviewed.

SECTION 1.(h) Meetings. – The Review Team may hold periodic public meetings to discuss, in a general manner without revealing confidential information about victims and their families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any closed session shall be sealed from public inspection.

SECTION 1.(i) Confidentiality; Immunity. – All otherwise confidential information and records acquired by the Review Team, during its existence and in the exercise of its duties, shall: (i) be confidential; (ii) not be subject to discovery or introduction into evidence in any proceedings; and (iii) only be disclosed as necessary to carry out the purposes of the Review Team. This section shall not prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

Each member of the Review Team and any invited participants shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the Review Team shall be governed by G.S. 132-1.4 and Section 1(g) of this act respectively. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

SECTION 2. Counties establishing review teams pursuant to this act shall operate for a period of five years from the date this act becomes effective.

SECTION 3. Each Review Team established pursuant to this act shall issue an interim report to the Governor's Commission on Domestic Violence summarizing its findings and activities by June 15, 2003, and a final report with recommendations for action by June 15, 2006. The reports shall not identify the specific cases or case reviews that led to the individual Review Team's findings and recommendations.

SECTION 4. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

SECTION 5. This act applies to Mecklenburg County and one rural county with a population of 75,000 or less, to be selected by the Governor's Commission on Domestic Violence, only.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 626:
Domestic Violence Fatality Review Team.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	May 15, 2001	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 626 would establish a pilot program to review domestic violence fatalities in Mecklenburg County and a county of less than 75,000 population to be determined by the Governor's Commission on Domestic Violence.***

BILL ANALYSIS: The bill would allow a county to create a multidisciplinary domestic fatality review team (Review Team), comprised of no more than 10 people, to be appointed by the local board of county commissioners.

The Review Team is to identify and review domestic violence related deaths, and to facilitate communication among the various organizations to prevent future fatalities. The Review Team would review the files of fatalities resulting from domestic violence situations where the victim is 18 years of age or older, after the district attorney certifies that any criminal investigation or court action involving the case is complete. Based upon these reviews, the Review Team would make recommendations to the appropriate agencies for the prevention of future domestic violence fatalities.

A lead agency would be designated by the local board of county commissioners to act as staff to the Review Team. The lead agency would have access to confidential records, collect the records, and remove all identifying information from the records prior to distributing the records to the Review Team. If the identity of any of the parties is known by some other means, no member of the Review Team could question the parent or other family member of the deceased or the alleged perpetrator. The records would retain confidential status in the hands of the lead agency. Members of the Review Team would not be subject to deposition and testimony as a result of their being a member of the Review Team; members would remain subject to deposition and testimony as a result of their independent knowledge of any cases.

The Review Team would operate for a period of 5 years, submit an interim report to the Governor's Commission on Domestic Violence by June 15, 2003, and submit a final report by June 15, 2006.

The Review Team would be created in Mecklenburg County, and in a rural county with a population of 75,000 or less, to be appointed by the Governor's Commission on Domestic Violence.

EFFECTIVE DATE: The bill would become effective when it becomes law.

BACKGROUND: The Review Team is patterned after the Child Fatality Review Team in Article 14 of Chapter 7B.

**Modified from a summary by R. Erika Churchill.*

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-15-01

S. B. No. 626 2nd Ed. Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Alexander
Sen.)

moves to amend the bill on page 3, line 14

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"SECTION 1.(h) Meetings. — Meetings of the Review Team are not subject to the provisions of Article 33 of Chapter 143 of the General Statutes. However, the Review Team may hold periodic public"

SIGNED Martha B. Alexander

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 626 A BILL TO BE ENTITLED AN ACT ESTABLISHING A PILOT PROGRAM TO REVIEW DOMESTIC VIOLENCE FATALITIES.

☐ 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 # 1), (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 D

SENATE BILL 626

Judiciary I Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S626-PCS3471-SA-22

Short Title: Domestic Violence Fatality Review Team. (Local)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PILOT PROGRAM TO REVIEW DOMESTIC VIOLENCE FATALITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Domestic Violence Fatality Review Team. – A county may establish a multidisciplinary domestic violence fatality review team to identify and review domestic violence related deaths, including homicides and suicides, and to facilitate communication among the various agencies and organizations involved in domestic violence cases to prevent future fatalities.

SECTION 1.(b) Definitions. – The following definitions apply in this act:

(1) Domestic violence fatality. – The death of a person that is the result of an act of domestic violence as defined in G.S. 50B-1.

(2) Review team. – The Domestic Violence Fatality Review Team.

SECTION 1.(c) Composition. – The Review Team shall consist of a lead agency, selected by the local board of county commissioners, and no more than 10 members, representing:

(1) A representative from a victim's services group.

(2) An attorney from the local district attorney's office.

(3) Local law enforcement personnel.

(4) A local elected official.

(5) A local attorney who represents victims of domestic violence.

(6) A local attorney who represents alleged perpetrators of domestic violence.

(7) A magistrate.

(8) A representative from an emergency services provider.

(9) A survivor of domestic violence.

(10) A representative of a local human services agency.

SECTION 1.(d) Powers and Duties of Lead Agency. – To accomplish the purposes of this act, the lead agency shall:

(1) Contact the individuals, agencies, or organizations to establish member assignments.

(2) Ensure the development of written operating procedures to govern the Review Team.

(3) Maintain records of and establish procedures for conducting team meetings, including scheduling meetings, notifying team members of the meetings, locating meeting places, preparing agendas, and recording meeting minutes.

(4) Designate cases for review.

(5) Collect, distribute, and maintain records and data used by team members related to domestic violence fatalities in the county.

(6) Distribute case records to team members, after redacting all identifying information from the records and data.

(7) Provide structured training and education for team members on domestic violence related topics.

(8) Compile and submit reports of Review Team activities as required by the Governor's Commission on Domestic Violence.

SECTION 1.(e) Responsibilities of Review Team. – The Review Team shall:

(1) Assist the lead agency in developing the written operating procedures that shall govern the Review Team.

(2) Identify methods to collect, analyze, and maintain data related to domestic violence fatalities in the county.

(3) Develop an understanding of the causes and effects of domestic violence and a familiarity with the services currently available in the community that address domestic violence issues.

(4) Identify areas where local government, law enforcement agencies, medical and mental health providers, and other local advocacy agencies may increase victim safety, increase public awareness, and provide the public with education and training in domestic violence related issues.

(5) Recommend action to the appropriate agencies for the prevention of future domestic violence fatalities.

SECTION 1.(f) Responsibilities of Team Members. – Individual team members are responsible for reviewing the facts and circumstances of fatalities that occur as a result of domestic violence. The team member shall review domestic violence fatalities of victims who were 18 years of age or older and all relevant historical data of the victim during the course of the victim's intimate relationship with the perpetrator of the crime. After reviewing a case, the team member shall share his or her findings with other team members to enable the Review Team to recommend the appropriate action to

the local agencies or organizations. However, no member of the Review Team shall review a domestic violence fatality case while the case is under investigation by law enforcement personnel or an action is pending in criminal or civil court. A team member may review a domestic violence fatality case only after a local district attorney has signed off on the case ensuring that any investigation or court action involving the case has been completed.

SECTION 1.(g) Access to Records. – The Review Team, during its existence, shall have access to all medical records, hospital records, and records maintained by the county or any local agency as necessary to carry out the purposes of this act, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. All of these records shall be released to the lead agency, who shall redact all identifying information from the records before distributing copies to the team members. The lead agency shall maintain one complete set of un-redacted records in each case file. The Review Team shall not, as part of the reviews authorized under this act, contact, question, or interview the parent of the victim or the alleged perpetrator or any other family member of the victim or alleged perpetrator whose record is being reviewed.

SECTION 1.(h) Meetings. – Meetings of the Review Team are not subject to the provisions of Article 33 of Chapter 143 of the General Statutes. However, the Review Team may hold periodic public meetings to discuss, in a general manner without revealing confidential information about victims and their families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any closed session shall be sealed from public inspection.

SECTION 1.(i) Confidentiality; Immunity. – All otherwise confidential information and records acquired by the Review Team, during its existence and in the exercise of its duties, shall: (i) be confidential; (ii) not be subject to discovery or introduction into evidence in any proceedings; and (iii) only be disclosed as necessary to carry out the purposes of the Review Team. This section shall not prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

Each member of the Review Team and any invited participants shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the Review Team shall be governed by G.S. 132-1.4 and Section 1(g) of this act respectively. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

SECTION 2. Counties establishing review teams pursuant to this act shall operate for a period of five years from the date this act becomes effective.

SECTION 3. Each Review Team established pursuant to this act shall issue an interim report to the Governor's Commission on Domestic Violence summarizing its findings and activities by June 15, 2003, and a final report with recommendations for action by June 15, 2006. The reports shall not identify the specific cases or case reviews that led to the individual Review Team's findings and recommendations.

SECTION 4. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

SECTION 5. This act applies to Mecklenburg County and one rural county with a population of 75,000 or less, to be selected by the Governor's Commission on Domestic Violence, only.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 300*
State and Local Government Committee Substitute Adopted 4/19/01

Short Title: Amend NC Emergency Management Laws. (Public)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-4 reads as rewritten:

"**§ 166A-4. Definitions.**

The following definitions apply in this Article:

~~(1) "Emergency Management." – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.~~

~~(2) "Emergency Management Agency." – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.~~

(1) "Contiguous Counties or Other Political Subdivisions." – Counties, and incorporated cities, towns, and villages whose corporate boundaries abut without geographic separation other than a minor body of water not exceeding one mile in width.

~~(3)~~ (2) "Disaster." – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(3) "Disaster Area." – The geographical areas affected by a disaster, including contiguous counties or other political subdivisions.

(4) "Eligible Entity." – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Chapter of the General Statutes.

(5) "Emergency Management." – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(6) "Emergency Management Agency." – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

~~(4)~~(7) "Political Subdivision." – Counties and incorporated cities, towns and villages.

(8) "Preliminary Damage Assessment." – The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by a disaster event.

(9) "Private Nonprofit Utilities." – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(10) "State Acquisition and Relocation Fund." – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program (HMGP) Acquisition and Relocation program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the HMGP Program and the cost of a comparable home located outside the 100-year floodplain."

SECTION 2. G.S. 166A-5 reads as rewritten:

"**§ 166A-5. State emergency management.**

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. – The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.

2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.

3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other

states and local units of government in matters pertaining to the emergency management of the State and nation.

4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.

5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.

6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.

7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the ~~removal.~~ removal of the debris.

8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. – The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management ~~activities and shall have:~~ activities. The Secretary shall have the following powers and duties as delegated by the Governor:

a. ~~The power, as delegated by the Governor, to~~ To activate the State and local plans applicable to the areas in question and ~~he shall be empowered~~ to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Article or any other provision of law.

b. To adopt the rules and procedures needed to implement this Chapter.

c. To develop a system of damage assessment through which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

~~b.~~d. Additional authority, duties, and responsibilities as may be prescribed by the ~~Governor, and he may~~ Governor. The Secretary may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.

d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network."

SECTION 3. G.S. 166A-6 reads as rewritten:

"**§ 166A-6. State of disaster.**

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

(a1) If a state of disaster is proclaimed, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available. Upon receipt of the preliminary damage assessment, either the Governor, by proclamation, or the General Assembly, by resolution, may choose to proclaim the disaster a Type I, Type II, or Type III disaster. The proclamation shall be based upon the severity of damage caused by the disaster, as shown in the preliminary damage assessment, and other factors as set forth below.

(1) A Type I disaster may be declared if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-8.

b. The governing body of any municipality or county seeking disaster assistance sends a written request for a Type I disaster declaration to the Governor or the General Assembly within five days of the declaration of the local state of emergency.

c. The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria as provided in this Chapter.

d. A major disaster declaration by the President of the United States pursuant to 42 U.S.C. § 5121, et seq. ("The Stafford Act") has not been declared.

A Type I disaster declaration may be made by the Governor or the General Assembly prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency (FEMA), or any other federal agency. A Type I disaster declaration shall expire 30 days after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(2) A Type II disaster may be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act. The Governor may request federal disaster assistance under the Stafford Act without making a Type II disaster declaration. A Type II disaster declaration shall expire six months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(3) A Type III disaster may be declared if the President of the United States issues a major disaster declaration under the Stafford Act and:

a. The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or

b. The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals or political subdivisions affected by the disaster.

A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(b) Any state of disaster declared before January 1, 2002, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

~~(b)~~ (c) In addition to any other powers conferred upon the Governor by law, during ~~the state of disaster, he~~ a state of disaster, the Governor shall have the following:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Article.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a local governmental unit which restricts the immediate relief of human suffering;

~~(5) To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and~~

~~magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;~~

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(d) In preparation for a state of disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for disasters."

SECTION 4. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-6A. State disaster assistance funds; programs.**

In the event that a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. State disaster

assistance funds shall be used to provide grants to individuals who are unable to meet disaster-related necessary expenses or other serious needs resulting from a disaster and to eligible entities that have suffered serious financial losses due to a disaster. State disaster assistance funds shall be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster.

It is the intent of the General Assembly in authorizing the provision of State disaster assistance funds and State disaster assistance programs to provide State assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(a) Disaster Assistance Programs – Type I Disaster. – In the event that a Type I disaster is proclaimed, the Governor may authorize State programs to provide funding in the disaster area for Individual Assistance and for Public Assistance as set forth below.

(1) Individual Assistance. – State disaster assistance in the form of grants to individuals and families shall include benefits comparable to those provided under the Stafford Act. Individual assistance grants may include funding for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to relocate the individual or family to safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the disaster.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public Assistance. – State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity shall participate in the National Flood Insurance Program and shall have an approved hazard mitigation plan within one year after the enactment of this statute; and

2. There is a minimum of ten thousand dollars ($10,000) in uninsurable losses; or

3. The uninsurable losses equal or exceed one-half percent (0.5%) of the annual operating budget.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. Uses of public assistance grant funds may include:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(e) In the event that a Type II or Type III disaster is proclaimed, the Governor may make State disaster assistance funds available through State disaster assistance programs when the federal assistance authorized by the Stafford Act does not fully meet the needs of the individual or family.

(1) Funding offered under Type II disasters includes grants for all of the following:

a. State Acquisition and Relocation Funds (SARF).

b. Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to relocate the individual and family to safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(2) Funding offered under Type III disasters includes grants for all of the following:

a. State Acquisition and Relocation Funds (SARF).

b. Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to relocate the individual or family to safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

c. Any programs authorized by the General Assembly."

SECTION 5. This act becomes effective December 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 300*

State and Local Government Committee Substitute Adopted 4/19/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S300*-PCS3465-SG-17

Short Title: Amend NC Emergency Management Laws. (Public)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-4 reads as rewritten:

"**§ 166A-4. Definitions.**

The following definitions apply in this Article:

~~(1) "Emergency Management." Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.~~

~~(2) "Emergency Management Agency." A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.~~

~~(3)~~(1) "Disaster." – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(2) "Disaster Area." – The geographical area covered by a proclamation made by the Governor pursuant to G.S. 166A-6(a1).

(3) "Eligible Entity." – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(4) "Emergency Management." – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which includes the never-ending

preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(5) "Emergency Management Agency." – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

~~(4)~~(6) "Political Subdivision." – Counties and incorporated cities, towns and villages.

(7) "Preliminary Damage Assessment." – The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by a disaster event.

(8) "Private Nonprofit Utilities." – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(9) "Stafford Act." – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(10) "State Acquisition and Relocation Fund." – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain."

SECTION 2. G.S. 166A-5 reads as rewritten:

"**§ 166A-5. State emergency management.**

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. – The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.

2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.

3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other

states and local units of government in matters pertaining to the emergency management of the State and nation.

4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the ~~removal.~~ removal of the debris.
8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.
9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. – The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management ~~activities and shall have:~~ activities. The Secretary shall have the following powers and duties as delegated by the Governor:

a. ~~The power, as delegated by the Governor, to~~ To activate the State and local plans applicable to the areas in question and ~~he shall be empowered~~ to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Article or any other provision of law.

b. To adopt the rules to implement this Article.

c. To develop a system of damage assessment through which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

~~b.~~d. Additional authority, duties, and responsibilities as may be prescribed by the ~~Governor, and he may~~ Governor. The Secretary may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.

d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network."

SECTION 3. G.S. 166A-6 reads as rewritten:

"**§ 166A-6. State of disaster.**

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

(a1) If a state of disaster is proclaimed, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available. Upon receipt of the preliminary damage assessment, the Governor shall issue a proclamation defining the area subject to the state of disaster and proclaiming the disaster as a Type I, Type II, or Type III disaster. In determining whether the disaster shall be proclaimed as a Type I, Type II, or Type III disaster, the Governor shall follow the standards set forth below.

(1) A Type I disaster may be declared if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-8, and a written copy of the declaration has been forwarded to the Governor;

b. The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. 166A-6A(b)(2)a.; and

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

A Type I disaster declaration may be made by the Governor prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency, or any other federal agency. A Type I disaster declaration shall expire 30 days after its issuance unless renewed by the Governor or the General

Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(2) A Type II disaster may be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act. The Governor may request federal disaster assistance under the Stafford Act without making a Type II disaster declaration. A Type II disaster declaration shall expire six months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(3) A Type III disaster may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act and:

a. The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or

b. The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals or political subdivisions affected by the disaster.

A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(b) Any state of disaster declared before July 1, 2001, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

~~(b)~~(c) In addition to any other powers conferred upon the Governor by law, during ~~the state of disaster, he~~ a state of disaster, the Governor shall have the ~~following:~~following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Article.

~~(c)~~(d) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a ~~local governmental unit~~ political subdivision which restricts the immediate relief of human suffering;

~~(5) To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;~~

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

~~(d)~~(e) In preparation for a state of disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for disasters."

SECTION 4. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-6A. State disaster assistance funds; programs.**

(a) If a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. Any State funds made available by the Governor for disaster assistance may be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster. It is the intent of the General Assembly in authorizing the Governor to make State funds available for disaster assistance and in authorizing the Governor to establish State disaster assistance programs to provide State

assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(b) Disaster Assistance Programs – Type I Disaster. – In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State disaster assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the disaster.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public Assistance. – State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;

2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one-half percent (0.5%) of the annual operating budget; and

3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program and shall have an approved hazard mitigation plan;

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) If a Type II disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) If a Type III disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly."

SECTION 5. This act becomes effective July 1, 2001.

SB 300:
Amend Emergency Management Laws

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Odom
Date:	May 15, 2001	**Summary by:**	Rick Zechini
Version:	Proposed House Committee Substitute to Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 300 amends the State's Emergency Management Act as recommended by the Legislative Disaster Response and Recovery Commission. The bill provides for the classification of disasters as Type I, Type II, or Type III disasters depending upon the severity of the damage caused by the disaster. The bill also provides for State disaster assistance funding and programs for individuals and local governments keyed to the disaster tiers.***

CURRENT LAW: The North Carolina Emergency Management Act, Article 1 of Chapter 166A of the General Statutes, provides for the preparation for, response to, and recovery from war and peacetime disasters. Under the act, the Governor is given the general direction and control of the State Emergency Management Program. The Governor has broad powers in times of disaster. He may make orders, enter into agreements with disaster organizations, cooperate and coordinate with the Federal Emergency Management Agency (FEMA) and other federal agencies, utilize the services, facilities and equipment of existing departments and agencies of the State, and direct State and local law-enforcement officers and agencies. With the concurrence of the Council of State he may compel evacuations from a stricken or threatened area of the State, control access to such areas, regulate vehicular and pedestrian traffic, use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and exercise other powers as necessary to promote and secure the safety of the civilian population.

The Secretary of Crime Control and Public Safety (Secretary), has the power, as delegated by the Governor, to activate the State and local emergency management plans and to deploy State resources as necessary to deal with a disaster.

The experience of Hurricane Floyd compelled a study of the Emergency Management Act and how the State provides disaster recovery and financial assistance. Senate Bill 300 addresses the need for the State to provide appropriate relief to individuals and local governments impacted by a disaster, tying the relief available to both the degree of damage caused by the disaster and the availability of disaster assistance at the federal level.

BILL ANALYSIS:

DEFINITIONS

Section 1 of the bill amends the definition section of the Emergency Management Act.

POWERS & DUTIES

Section 2 of the bill amends G.S. 166A-5 setting forth the powers and duties of the Governor and the Secretary for implementing the State Emergency Management Program.

- The Governor is authorized to use contingency and emergency funds to provide assistance in the event of a disaster. He is further authorized to reallocate other funds as are reasonably available

within existing appropriations when the severity and magnitude of a disaster requires such action and the contingency and emergency funds are insufficient or inappropriate. Under the existing statutes, the Governor may use these funds only with the concurrence of the Council of State.

- The Secretary is charged with developing a system of damage assessment through which he or she can recommend the appropriate level of disaster declaration to the Governor.

DISASTER TIERS

Section 3 of the bill establishes the disaster declaration tiers. After the Governor or General Assembly declares a state of disaster, the Governor may proclaim the disaster as either a Type I, Type II, or Type III disaster based upon the preliminary damage assessment provided by the Secretary.

A **Type I disaster** involves a local disaster event. To be declared a Type I disaster the event must meet all of the following criteria:

- A local state of emergency has been declared pursuant to G.S. 166A-8 and a written copy of the declaration has been forwarded to the Governor.
- The preliminary damage assessment must meet or exceed the criteria established for the Small Business Administration Disaster Assistance Loan Program or the State infrastructure criteria provided in Section 4 of the act. The threshold for the SBA Disaster Assistance Loan Program is 25 homes and or businesses damaged with a 40% uninsured loss.
- The President of the United States has not made a major disaster declaration under the Stafford Act for the event.

A Type I disaster declaration expires 30 days after issuance. It may be renewed by the Governor or the General Assembly in 30 day increments, not to exceed a total of 120 days.

A **Type II disaster** may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act. Type II disaster declarations expire 6 months after issuance unless renewed in increments of 3 months not to exceed a total of 12 months.

A Type III disaster may be declared if (1) the President makes a major disaster declaration or (2) the preliminary damage assessment is such that it prompts the Governor to call a special session of the General Assembly to deal with the provision of disaster recovery assistance. A Type III disaster declaration expires 12 months after issuance unless renewed by the General Assembly.

DISASTER ASSISTANCE FUNDING/PROGRAMS

Section 4 of the bill establishes a new section of the Emergency Management Act and provides for State disaster assistance funding and programs. The purpose of the section is to provide State assistance for recovery from those disasters for which federal disaster assistance under the Stafford Act is either not available or insufficient to meet the needs of the people in the disaster area.

Disaster Assistance Funding for Type I disasters.

Type I disasters by definition do not meet the standards for major disaster declarations entitling affected individuals and units of government to federal disaster assistance. In authorizing State assistance for Type I disasters, the General Assembly is seeking to provide assistance comparable to what would be provided by the federal government under the Stafford Act. State programs are authorized to provide funding for both individual assistance and public assistance.

Individual assistance in the form of grants may include funding for:

- Provision of temporary housing and rental assistance.
- Repair and replacement of dwellings.
- Replacement of personal property.
- Repair or replacement of private vehicles.
- Medical or dental expenses.
- Funeral or burial expenses.
- Funding for the cost of the first year flood insurance premium.

Public assistance may include grants for:

- Debris clearance.
- Emergency protective measures.
- Roads and bridges.
- Crisis counseling.
- Assistance with public transportation needs.

In order to qualify for public assistance, however, an eligible entity must:

- Have a minimum of $10,000 in uninsurable losses.
- Uninsurable losses must equal or exceed 0.5% of the annual operating budget.
- For state of disasters proclaimed after August 1, 2002, an eligible entity must be participating in the National Flood Insurance Program and have an approved hazard mitigation plan in place.

Eligible entities are required to provide non-State matching funds, not to exceed 25% of the eligible costs of the public assistance grant.

Disaster Assistance for Type II and Type III disasters.

State disaster assistance for Type II and Type III disasters is designed to supplement the federal disaster assistance available under the Stafford Act under circumstances where the available federal assistance does not fully meet the needs of individuals and families. State disaster assistance authorized by the bill includes State Acquisition and Relocation Funds, supplemental repair and replacement housing grants not to exceed $25,000, and in the event of a Type III disaster proclamation, any additional programs authorized by the General Assembly.

EFFECTIVE DATE

The act becomes effective July 1, 2001.

Barbara Riley, Attorney, Research Division, substantially contributed to the preparation of this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT XI**

(Please type or use ballpoint pen)

EDITION No. PCS

~~H. B. No.~~ _____ DATE 5/15/01

~~S. B. No.~~ SB 300 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
~~Sen.)~~

1 moves to amend the bill on page 10, line 26

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 SECTION 5.

5 "This act becomes effective July 1, 2001,

6

7 and applies to any state of disaster proclaimed

8

9 on or after that date."

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SIGNED Gene Arnold

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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 300 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY 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 # 1), (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 D

SENATE BILL 300*

State and Local Government Committee Substitute Adopted 4/19/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S300*-PCS6285-SG-18

Short Title: Amend NC Emergency Management Laws. (Public)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING EMERGENCY MANAGEMENT AS RECOMMENDED BY THE LEGISLATIVE DISASTER RESPONSE AND RECOVERY COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-4 reads as rewritten:

"**§ 166A-4. Definitions.**

The following definitions apply in this Article:

~~(1) "Emergency Management." Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.~~

~~(2) "Emergency Management Agency." A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.~~

~~(3)~~(1) "Disaster." – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(2) "Disaster Area." – The geographical area covered by a proclamation made by the Governor pursuant to G.S. 166A-6(a1).

(3) "Eligible Entity." – Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(4) "Emergency Management." – Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which includes the never-ending

preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(5) "Emergency Management Agency." – A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

~~(4)~~(6) "Political Subdivision." – Counties and incorporated cities, towns and villages.

(7) "Preliminary Damage Assessment." – The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by a disaster event.

(8) "Private Nonprofit Utilities." – A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(9) "Stafford Act." – The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(10) "State Acquisition and Relocation Fund." – State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain."

SECTION 2. G.S. 166A-5 reads as rewritten:

"**§ 166A-5. State emergency management.**

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. – The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.

2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.

3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other

states and local units of government in matters pertaining to the emergency management of the State and nation.

4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.

5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.

6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.

7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the ~~removal.~~ removal of the debris.

8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. – The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management ~~activities and shall have:~~ activities. The Secretary shall have the following powers and duties as delegated by the Governor:

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

~~(d)~~(e) In preparation for a state of disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for disasters."

SECTION 4. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-6A. State disaster assistance funds; programs.**

(a) If a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. Any State funds made available by the Governor for disaster assistance may be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster. It is the intent of the General Assembly in authorizing the Governor to make State funds available for disaster assistance and in authorizing the Governor to establish State disaster assistance programs to provide State

assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(b) Disaster Assistance Programs – Type I Disaster. – In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. – State disaster assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the disaster.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public Assistance. – State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;

2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one-half percent (0.5%) of the annual operating budget; and

3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program and shall have an approved hazard mitigation plan;

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) If a Type II disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) If a Type III disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly."

SECTION 5. This act becomes effective July 1, 2001, and applies to any state of disaster proclaimed on or after that date.

House Judiciary I Committee

May 17, 2001

Minutes

The House Judiciary I Committee met on Thursday, May 17, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Wib Gulley was recognized for an explanation of Senate Bill 759, AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY, (Attachment III). Senator Gulley offered a proposed House Committee Substitute, (Attachment IV), and Representative Sutton moved that it be adopted for the purpose of discussion. The motion carried. Senator Gulley stated that the bill dealt with the issue of liability and financial responsibility for claims arising out of the proposed passenger rail service. The bill would authorize a Regional Public Transportation Authority to contract with any railroad to allocate financial responsibility for claims arising out of the proposed service; would require the Authority to maintain at least 200 million dollars in liability insurance covering the contracting parties and railroads with operating rights affected by the proposed passenger rail service; and would limit liability of the Authority, parties to the contract, and railroads with operating rights affected by the proposed passenger rail service for claims arising out of the passenger rail service.

Mr. Frank Folger, Committee Counsel, was recognized for additional comments. A copy of his bill analysis is attached to the minutes, (Attachment V).

Mr. Chuck Neely commented briefly in support of the bill.

Following brief committee discussion, Representative Arnold moved that the committee substitute be given a favorable report. The motion carried, (Attachment VI).

Senator Allen Wellons was recognized for a continuation of the discussion of Senate Bill 936, AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING, (Attachment VII). The bill was first explained during the May 10, 2001 Judiciary I meeting. A proposed House Committee Substitute, (Attachment VIII), was distributed and Representative Arnold moved that it be adopted for the purpose of discussion. Senator Wellons stated that the committee substitute had been drafted to address concerns of members regarding the removal of a name from the registry when the person has been found not guilty or has received a pardon of innocence.

Ms. Susan Sitze, Committee Counsel, called attention to Section 3 of the bill that would add language regarding the discontinuation of the registration requirement. A bill analysis giving further explanation of the bill is attached, (Attachment IX).

Representative Blue moved that the committee substitute be given a favorable report.

Brief committee discussion followed and Mr. Mark Ezzell, Governor's Crime Commission, responded to a few questions.

Upon vote of the committee, the House committee substitute for Senate Bill 936 was given a favorable report, (Attachment X).

Representative Blue was asked to handle the bill on the floor.

The meeting adjourned at 10:30 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MAY 17, 2001
10:00 A.M.

AGENDA

SENATE BILL 759 – RAIL TRANSPORTATION LIABILITY
SENATOR WIB GULLEY

SENATE BILL 936 – SEX OFFENDER REGISTRATION/CONFORM WITH FEDERAL LAW
SENATOR ALLEN WELLONS

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 17, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Lamm	United Transportation Union
Richard Westbrook	United Transportation Union
Chad Cromer	NCATL
John McHugh	GOV OFFICE
John Phelps	NCLM
Ross M. Smith	PCS Phosphate
Jack Cozort	PPAB
Barbara Carsler	Manning, Fulton & Skinner
DJ Gold	ACLU
BNBBLTJ	NTR
Jim Ritchey	TTA
Reg Reno	[illegible]
[illegible]	AGO
[illegible]	GCC
Humpty Dumpty	On The Wall
Greg McLeod	CCPS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 759
Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Rail Transportation Liability. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-626. Limitations on rail transportation liability.**

(a) As used in this section:

(1) "Authority" means a Regional Public Transportation Authority as defined in G.S. 160A-601.

(2) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The Authority, a railroad, or a State-owned railroad; or

b. An officer, trustee, employee, affiliate engaged in railroad operations, or agent of: the Authority, a railroad, or a State-owned railroad.

(3) "Passenger Rail Services" shall include the transportation of rail passengers by or on behalf of the Authority, including all services performed by a railroad or a State-owned railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, and including, but not limited to, the operation of trains, the use of trackage, equipment, or station areas or appurtenant facilities, or the construction, reconstruction, or maintenance of rail-related equipment, tracks, and any appurtenant facilities, or the provision of access rights over or adjacent to lines owned by the Authority, a railroad, or a State-owned railroad, or otherwise occupied by the Authority, a railroad, or a State-owned railroad pursuant to

charter grant, fee-simple deed, lease, easement, license, or other form of ownership.

(4) "Railroad" means a railroad corporation or company not wholly owned by the State that has entered into any contracts or operating agreements of any kind with the Authority concerning rail service by or on behalf of the Authority over or adjacent to facilities of the Authority, a railroad, or a State-owned railroad.

(5) "State-Owned Railroad" means a railroad corporation or company as defined in G.S. 124-11.

(b) Contracts Allocating Financial Responsibility Authorized. — The Authority may enter into contracts with any railroad or with a State-owned railroad, or with any railroad and a State-owned railroad, that allocates financial responsibility for passenger rail services claims against the railroad, a State-owned railroad, or the Authority notwithstanding any other statutory, common law, public policy or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. — If the Authority enters into any contract authorized by subsection (b) of this section allocating financial responsibility, the contract shall require the Authority to secure and maintain a liability insurance policy covering the liability of the parties to the contract for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract as named insureds, and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(d) Liability Limit. — The aggregate liability of the parties to a contract authorized by this section for all claims, whether compensatory, punitive, or otherwise, arising from a single accident or incident related to passenger rail services, for property damage, personal injury, bodily injury, and death is limited to the greater of two hundred million dollars ($200,000,000) per single accident or incident or any proceeds available under any insurance policy secured pursuant to subsection (c) of this section.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 759

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S759-CSSO-37 [v.4]

5/17/2001 9:28:21 AM

Short Title: Rail Transportation Liability. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-626. Limitations on rail transportation liability.**

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The Authority, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the Authority, a railroad, or an operating rights railroad.

(2) "Passenger Rail Services" means the transportation of rail passengers by or on behalf of the Authority and all services performed by a railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the construction, reconstruction, or maintenance of rail-related equipment, tracks, and any appurtenant facilities, and the provision of access rights over or adjacent to lines owned by the Authority or a railroad, or otherwise occupied by the Authority or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(3) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the Authority concerning passenger rail services.

(4) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the Authority.

(b) Contracts Allocating Financial Responsibility Authorized. — The Authority may contract with any railroad to allocate financial responsibility for passenger rail services claims, notwithstanding any other statutory, common law, public policy or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the Authority enters into any contract authorized by subsection (b) of this section, the contract shall require the Authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the Authority, a liability insurance policy covering the liability of the parties to the contract and an operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract and an operating rights railroad as named insureds, and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the Authority does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the Authority, the Authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subsection (c)(1) of this section, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the Authority, the parties to thee contract or contracts authorized by subsection (b) of this section, and an operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes."

SECTION 2. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 759:
Rail Transportation Liability

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Gulley
Date:	May 17, 2001	**Summary by:**	Frank W. Folger Committee Counsel
Version:	Proposed Committee Substitute for Second Edition (S759-CSSO-37)		

SUMMARY: ***The proposed committee substitute for Senate Bill 759 would authorize a Regional Public Transportation Authority (the Authority) to contract with any railroad to allocate financial responsibility for claims arising out of a proposed passenger rail service; to require the Authority to maintain liability insurance covering the contracting parties and railroads with operating rights affected by the proposed passenger rail service; and to limit liability of the Authority, parties to the contract, and railroads with operating rights affected by the proposed passenger rail service for claims arising out of the passenger rail service.***

BILL ANALYSIS: The proposed committee substitute for Senate Bill 759 would add a new section to Article 26 of Chapter 160A that would:

- Authorize the Authority to contract with any railroad, as defined by the section, to allocate financial responsibility for passenger rail services claims against the parties to the contract and railroads with operating rights affected by the passenger rail service.
- Require the Authority, whether or not it contracts to allocate financial responsibility, to secure and maintain at least $200 million in liability insurance covering the parties to the contract and railroads with operating rights affected by the passenger rail service for damages (property damage, personal injury, bodily injury, or death) arising out of or related to passenger rail services. The policy limits would have to be at least $200 million per occurrence.
- Limit the aggregate allowable awards for all claims arising from a single incident, against the Authority, the contracting parties and railroad with operating rights affected by the proposed passenger rail service, to $200 million or the amount of the proceeds available under the insurance policy maintained by the Authority, whichever is greater.

EFFECTIVE DATE: This act would be effective when it becomes law.

Wendy Graf, counsel to the Senate Judiciary I Committee, contributed to this summary.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 759 A BILL TO BE ENTITLED AN ACT TO PROVIDE LIMITATIONS ON RAIL TRANSPORTATION LIABILITY.

☐ 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 2

SENATE BILL 936
Judiciary I Committee Substitute Adopted 4/16/01

Short Title: Sex Offender Reg/Conform W/Fed Law. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'Aggravated offense' means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal penile penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal penile penetration with a victim who is less than 12 years old.

~~(1a)~~(1b) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1b)~~(1c) 'Division' means the Division of Criminal Statistics of the Department of Justice.

~~(1c)~~(1d) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1e) 'Nonresident student' means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a full-time basis.

(1f) 'Nonresident worker' means a person who is not a resident of North Carolina but who has full-time or part-time employment in the State, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1d)~~(1g) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Recidivist' means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, would have been an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7

(intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

SECTION 2. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. ~~Registration~~ Lifetime registration requirements for criminal ~~offenders and for criminal offenders determined to be sexually violent predators.~~ offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public

record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 3. G.S. 14-208.7 is amended by adding a new subsection to read:

"(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence."

SECTION 4. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address.**

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address."

SECTION 5. G.S. 14-208.20 reads as rewritten:

"**§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.**

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least ~~two people who are~~ four people. Two of the board members shall be experts in the field of the behavior and treatment of sexual offenders,

one of whom ~~is~~ shall be selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency. One of the board members shall be a victims' rights advocate, and one of the board members shall be a representative of law enforcement agencies.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings."

SECTION 6. G.S. 14-208.21 reads as rewritten:

"**§ 14-208.21. ~~Registration procedure for sexually violent predator;~~ Lifetime registration procedure; application of Part 2 of this Article.**

~~The~~ Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a person classified as a sexually violent ~~predator unless provided otherwise by this Part.~~ predator, a person who is a recidivist, or a person who is convicted of an aggravated offense. The procedure for registering as a sexually violent ~~predator~~ predator, a recidivist, or a person convicted of an aggravated offense is the same as under Part 2 of this Article."

SECTION 7. G.S. 14-208.22 reads as rewritten:

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency."

SECTION 8. G.S. 14-208.23 reads as rewritten:

"**§ 14-208.23. Length of registration.**

~~The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.~~ A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the

person's life. The requirement of registration shall not be terminated under any circumstances."

SECTION 9. G.S. 14-208.24 reads as rewritten:

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section."

SECTION 10. G.S. 14-208.25 is repealed.

SECTION 11. 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 936
Judiciary I Committee Substitute Adopted 4/16/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S936-CSSA-23 [v.1]

5/16/2001 2:30:02 PM

Short Title: Sex Offender Reg/Conform W/Fed Law. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'Aggravated offense' means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal penile penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal penile penetration with a victim who is less than 12 years old.

~~(1a)~~(1b) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1b)~~(1c) 'Division' means the Division of Criminal Statistics of the Department of Justice.

~~(1c)~~(1d) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1e) 'Nonresident student' means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a full-time basis.

(1f) 'Nonresident worker' means a person who is not a resident of North Carolina but who has full-time or part-time employment in the State,

with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1d)~~(1g) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Recidivist' means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, would have been an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first

degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

SECTION 2. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. ~~Registration~~ Lifetime registration requirements for criminal ~~offenders and for criminal offenders determined to be sexually violent predators.~~ offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal

institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 3. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6C. Discontinuation of registration requirement.**

The period of registration required by any of the provisions of this Article shall be discontinued only if the conviction requiring registration is reversed, vacated, or set aside, or if the registrant has been granted an unconditional pardon of innocence for the offense requiring registration."

SECTION 4. G.S. 14-208.7 is amended by adding a new subsection to read:

"(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence."

SECTION 5. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address.**

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address."

SECTION 6. G.S. 14-208.20 reads as rewritten:

"**§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.**

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause

shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least ~~two people who are~~ four people. Two of the board members shall be experts in the field of the behavior and treatment of sexual offenders, one of whom ~~is~~ shall be selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency. One of the board members shall be a victims' rights advocate, and one of the board members shall be a representative of law enforcement agencies.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings."

SECTION 7. G.S. 14-208.21 reads as rewritten:

"**§ 14-208.21. ~~Registration procedure for sexually violent predator;~~ Lifetime registration procedure; application of Part 2 of this Article.**

~~The~~ Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a person classified as a sexually violent ~~predator unless provided otherwise by this Part.~~ predator, a person who is a recidivist, or a person who is convicted of an aggravated offense. The procedure for registering as a sexually violent ~~predator~~ predator, a recidivist, or a person convicted of an aggravated offense is the same as under Part 2 of this Article."

SECTION 8. G.S. 14-208.22 reads as rewritten:

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency."

SECTION 9. G.S. 14-208.23 reads as rewritten:

"**§ 14-208.23. Length of registration.**

~~The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.~~ A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's life. The requirement of registration shall not be terminated under any circumstances."

SECTION 10. G.S. 14-208.24 reads as rewritten:

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section."

SECTION 11. G.S. 14-208.25 is repealed.

SECTION 12. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 936: Sex Offender Registration/Conform with Federal Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Wellons
Date:	May 10, 2001	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 936 amends the sex offender registration statutes to comply with federal law and to maintain funding eligibility under the Byrne Grant.

BILL ANALYSIS: Senate Bill 936 amends Article 27A of Chapter 14, which deals with sex offender registration programs. The bill adds two new classes of offenders, those who are recidivists and those who commit aggravated offenses, who must register for life rather than the 10-year period of time.

The bill defines "aggravated offense" to be a criminal sexual act involving vaginal penile penetration with a victim of any age through the use of force or threat of violence, or involving vaginal penile penetration with a victim who is less than 12 years old. It defines "recidivist" as one who has a prior conviction requiring sex offender registration.

The bill requires a person who is a nonresident student or nonresident worker in this State to register in the county where the person attends school or works as appropriate.

The bill also requires a sheriff who receives notice from a registrant that the registrant is moving to another state to provide the registrant with notice that they must comply with the new state of residence's registration requirements. The sheriff must also provide the registrant's new address to the Division of Criminal Statistics of the Department of Justice, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

G.S. 14-208.20 provides that, prior to sentencing, a study shall be conducted of the defendant by a board of experts selected by the Department of Correction to determine whether a person is a sexually violent predator. The bill expands this board of experts from two to four. The two new additional members are to be selected by the Department of Correction; one must be a victims' right advocate and one must be a representative of law enforcement agencies.

The bill repeals the statutory provisions that allow a person required to register for lifetime to petition the court to have their names removed from the sexual offender registry after 10 years of good behavior and provides that under no circumstances can the person's name be removed from the registry for the person's lifetime.

The bill clarifies that a person residing in North Carolina who was convicted in a military court of a sex offense must comply with the State's registration requirements.

*Emily Johnson and Al Andrews substantially contributed to this summary

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 936 A BILL TO BE ENTITLED AN ACT AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

☐ 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 Judiciary I Committee

May 22, 2001

Minutes

The House Judiciary I Committee met on Tuesday, May 22, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Martin Nesbitt called the meeting to order and the following members were present: Representatives Arnold, Blust, Gray, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Wib Gulley was recognized for an explanation of Senate Bill 719, AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY, (Attachment III). Senator Gulley stated that a proposed House Committee Substitute had been prepared, (Attachment IV). It was distributed to the members of the Committee, and Representative Gene Arnold moved that it be adopted for the purpose of discussion. The motion carried. Senator Gulley said that the bill would provide for quick-take procedures in the context of an eminent domain proceeding for the Triangle Transit Authority and the North Carolina Railroad.

Mr. Frank Folger, Committee Counsel, offered further explanation of the bill. A copy of a bill analysis prepared by Mr. Folger is attached, (Attachment V).

Mr. Jim Ritchey, General Manager, Triangle Transit Authority, said that the 35-mile regional rail project from Duke Hospital to Spring Forest Road in North Raleigh does occupy some of the property of the North Carolina Railroad. He said that as the project moves along, property would have to be acquired for station sites, slope easements or drainage easements. He said that around 300 properties will be impacted by the project and that not all 300 will be willing sellers.

Representative Sutton asked if the new lines would be laid for the rail project on the property of the North Carolina Railroad. Mr. Ritchey replied that this was correct. The TTA would have an entirely separate system 25 feet away from the existing Norfolk Southern or North Carolina Railroad tracks.

Representative Gray moved that the House Committee Substitute be given a favorable report and that the Senate Committee Substitute be given an unfavorable report. Following additional discussion, the motion carried, (Attachment VI).

The meeting adjourned at 10:40 a. m.

Martin Nesbitt

Representative Martin Nesbitt
Vice Chairman

Emily Reynolds Freeman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MAY 22, 2001

10:00 A.M.

AGENDA

SENATE BILL 719 – TTA EMINENT DOMAIN

SENATOR WIB GULLEY

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 22, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Runquist	NCPTA
Dina Ritely	ITA
Jack Cuneo	Parker Poe
Ken McHan	Allen Associates
Rachael Whitehurst	UTU
Matt Brady	Capitol Group
[illegible]	Rep. Sutton's office
Lynn Banner	N4C
Matt Brady	CCNC
[illegible]	Sierra Club
Catherine Davis	ElectriCities
BRUCE THOMPSON	ARNOLD & PORTER FOR ADAMS & BERNSTEIN
[illegible]	Transit Authority
STEVE LAMAR	United Transportation Union

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 719
Judiciary I Committee Substitute Adopted 4/12/01

Short Title: TTA Eminent Domain. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemner is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemner is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), ~~(10) or (12),~~ (10), (12), or (13), or when a State-owned railroad company as defined in G.S. 124-11 is acquiring property as authorized in G.S. 40A-3(a)(5), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemner upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 719

Judiciary I Committee Substitute Adopted 4/12/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S719-CSSO-6 [v.2]

5/21/2001 10:39:44 AM

Short Title: TTA Eminent Domain. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemner is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemner is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), ~~(10) or (12),~~ (10), (12), or (13), or when a State-owned railroad company as defined in G.S. 124-11 is acquiring property as authorized in G.S. 40A-3(a)(5), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemner upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

SECTION 2. G.S. 124-12 reads as rewritten:

"**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. – A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or

otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. – A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision, except as otherwise provided in G.S. 40A-42."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 719:
TTA Eminent Domain

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Gulley
Date:	May 22, 2001	**Summary by:**	Frank W. Folger
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 719 would allow regional public transportation authorities and State-owned railroad companies to use the "quick take" procedures when they are acquiring property by condemnation.***

CURRENT LAW: Under G.S. 40A-3(a)(5), a State-owned railroad company, deemed a private condemnor, may condemn land in fee simple for specified types of construction, maintenance, improvements, and connections. Under G.S. 40A-3(c)(13), a regional transportation authority can condemn land for its purposes established in Article 26 of Chapter 160A of the General Statutes.

G.S. 40A-42 sets out when title to condemned property vests with a public condemnor and when that condemnor has right of possession to the property. Subsection (a) of that statute provides that, under specified conditions, title to the property vests in the condemnor upon filing a complaint and making a deposit in the amount estimated by the condemnor to be just compensation for the taking. This procedure is commonly referred to as the "quick-take" procedure. Use of the "quick take" procedure is limited to condemnation:

1. By "local public condemnors" for streets and sidewalks work, sewer and drainage systems, programs for drainage of creeks and streams; (N.C.G.S. §40A-3(b)(1), (4), and (7))

2. By cities for electricity, water supply and distribution, wastewater treatment and disposal, gas, solid waste collection and disposal, and cable television;(N.C.G.S. §160A-311(1), (2), (3), (4), (6) and (7))

3. By counties for water, wastewater treatment and disposal, and solid waste collection and disposal;(N.C.G.S. §153A-274(1), (2), and (3))

4. By local board(s) of education for suitable sites for school buildings and other facilities;(N.C.G.S. §115C-517)

5. By water and sewer districts and authorities (N.C.G.S. §40A-3(c)(8), (9), (10), and (12); Chapter 162A)

Currently, the earliest that title to property can vest in a State-owned railroad company in a condemnation proceeding is 20 days after the filing of the commissioners' report and deposit of the adjudged sum for the taking when the report is favorable to the condemnor and not excepted to by any of the parties. Also when a regional transportation authority condemns land pursuant to G.S. 40A-3 (c), title to the property does not vest until the earliest of the following: 1) the filing of an answer by the owner who requests only that there be a determination of just compensation, 2) the failure of the owner to file an answer within 120 days, or 3) the disbursement of money deposited in the court to the person named in the complaint.

BILL ANALYSIS: Senate Bill 719 would amend G.S. 40-42(a) to provide "quick-take" procedures for regional transportation authorities and State-owned railroad companies in exercising powers of eminent

domain. It would also make conforming changes to G.S. 124-12, governing the power of a State-owned railroad company. .

EFFECTIVE DATE: This act would be effective when it becomes law.

Wendy L. Graf, counsel to the Senate Judiciary I Committee, contributed to this summary.

§ 40A-28. Exceptions to report; hearing; when title vests; appeal; restitution.

(a) Upon the filing of the report, the clerk shall forthwith mail copies to the parties. Within 20 days after the filing of the report any party to the proceedings may file exceptions thereto. The clerk, after notice to the parties, shall hear any exceptions so filed and may thereafter direct a new appraisal, modify or confirm the report, or make such other orders as the clerk may deem right and proper.

(b) If no exceptions are filed to the report, and if the clerk's final judgment rendered upon the petition and proceedings shall be in favor of the condemnor, and upon the deposit by the condemnor of the sum adjudged, together with all costs allowed, into the office of the clerk of superior court, then, in that event, all owners who have been made parties to the proceedings shall be divested of the property or interest therein to the extent set forth in the proceedings. A copy of the judgment, certified under the seal of the court, shall be registered in the county or counties where the land is situated, and the original judgment, or a certified copy thereof, or a certified copy of the registered judgment, may be given in evidence in all actions and proceedings as deeds for property are now allowed in evidence.

(c) Any party to the proceedings may file exceptions to the clerk's final determination on any exceptions to the report and may appeal to the judge of superior court having jurisdiction. Notice of appeal shall be filed within 10 days of the clerk's final determination. Upon appeal the clerk shall transfer the proceedings to the civil issue docket of the superior court. A judge in session shall hear and determine all matters in controversy and, subject to G.S. 40A-29 regarding trial by jury, shall determine any issues of compensation to be awarded in accordance with the provisions of Article 4 of this Chapter.

(d) Notwithstanding the filing of exceptions by any party to any orders or final determination of the clerk or the filing of a notice of appeal to the superior court, the condemnor may, at the time of the filing of the report of commissioners, deposit with the clerk of superior court in the proceedings the sum appraised by the commissioners and, in that event, the condemnor may enter, take possession of, and hold said property in the manner and to the extent sought to be acquired by the proceedings until final judgment is rendered on any appeal.

(e) If, on appeal, the judge shall refuse to condemn the property, then the money deposited with the clerk of court in the proceedings, or so much thereof as shall be adjudged, shall be refunded to the condemnor and the condemnor shall have no right to the property and shall surrender possession of the same, on demand, to the owner. The judge shall have full power and authority to make such orders, judgments and decrees as may be necessary to carry into effect the final judgment rendered in such proceedings, including compensation in accordance with the provisions of G.S. 40A-8.

(f) If the amount adjudged to be paid the owner of any property condemned under this Article shall not be paid within 60 days after final judgment in the proceedings, the right under the judgment to take the property shall ipso facto cease and determine, but the claimant under the

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judgment shall still remain liable for all amounts adjudged against said claimant except the compensation awarded for the taking of the property.

(g) The provisions of this section shall not preclude any injunctive relief otherwise available to the owner or the condemnor.

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§ 40A-42. Vesting of title and right of possession; injunction not precluded.

(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

(1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or

(2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or

(3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.

(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor.

(1981, c. 919, s. 1; 1989 (Reg. Sess., 1990), c. 871, s. 1; 1998-212, s. 9.10.)

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Local Modification. - Cabarrus: 1991 (Reg. Sess., 1992), c. 937, s. 2; 1993 (Reg. Sess., 1994), c. 700, s. 1; Duplin: 1993 (Reg. Sess., 1994), c. 608, s. 1; Franklin: 1989, c. 432, s. 1; Guilford: 1987, c. 669, s. 4; Person: 1983, 829; Wake: 1985, c. 640, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 4; town of Holly Springs: 1985 (Reg. Sess., 1986), c. 941; town of Wrightsville Beach: 1993, c. 187, s. 2.

Editor's Note. - Session Laws 1998-212, s. 1.1 provides: "This act shall be known as the 'Current Operations Appropriations and Capital Improvement Appropriations Act of 1998'."

Session Laws 1998-212, s. 30.5 contains a severability clause.

Effect of Amendments. - The 1998 amendment, effective July 1, 1998, inserted "or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517" in the first sentence of subsection (a).

CASE NOTES

Subsection (a) does not grant landowner a statutory right to bring an action for injunctive relief to bar condemnation proceeding and to prevent the title and the right to immediate possession of the property from vesting in defendant when under § 40A-45 landowner has an adequate remedy of law. Tradewinds Campground, Inc. v. Town of Atlantic Beach, 90 N.C. App. 601, 369 S.E.2d 365, cert. denied, 323 N.C. 180, 373 S.E.2d 126 (1988).

Title of Defendants Holding Property as Tenants by Entirety Need Not Be Divested Simultaneously in Condemnation Proceeding. - Where plaintiff acquired title to defendants' interest in certain property owned by them as tenants by the entirety, and even though plaintiff argued such title on separate dates, this Chapter contains no requirement that title to condemned property be divested simultaneously. Town of Chapel Hill v. Burchette, 100 N.C. App. 157, 394 S.E.2d 698 (1990).

Effect of Answer Which Did Not Contest Plaintiff's Power to Condemn. - Where, in condemnation proceeding original answer of defendant property owner contested only amount of compensation due and did not contest power of plaintiff to condemn property, title to defendant's interest vested in plaintiff at that time, and plaintiff's filing of amended complaint did not void defendant's original answer. Town of Chapel Hill v. Burchette, 100 N.C. App. 157, 394 S.E.2d 698 (1990).

Effect of Failure to File Action for Injunctive Relief. - Title to condemned property vested and the county had the right to take immediate possession when they filed the complaint and deposited the estimated just compensation, since the landowners did not file an action for injunctive relief before the condemnation complaint was filed. Scotland County v. Johnson, 131 N.C. App. 765, 509 S.E.2d 213 (1998).

"Reasonable Diligence". - In an inverse condemnation suit where plaintiff's advertisement sign was torn down by defendant city, plaintiff's allegation in the complaint that defendant city failed to exercise reasonable diligence to discover plaintiff's interest and that plaintiff's sign was prominently constructed upon the property creates an issue of fact as to whether defendant city exercised reasonable diligence. Schloss Outdoor Adv. Co. v. City of Charlotte, 50 N.C. App. 150, 272 S.E.2d 920 (1980), decided under prior law.

Cited in UNCC Properties, Inc. v. Greene, 111 N.C. App. 391, 432 S.E.2d 699 (1993); Dare County Bd. of Educ. v. Sakaria, 127 N.C. App. 585, 492 S.E.2d 369 (1997).

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§ 124-12. Powers of a State-owned railroad company.

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. - A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. - A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this subdivision.

(2000-146, s. 7.)

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2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 719 A BILL TO BE ENTITLED AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY.

☐ 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 Judiciary I Committee

May 24, 2001

Minutes

The House Judiciary I Committee met on Thursday, May 24, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blue, Blust, Insko, Sutton, and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the Committee would consider a Proposed Committee Substitute for Senate Bill 774, AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES. The bill was first discussed on May 8, 2001 and given a favorable report by the committee. It was re-referred to the committee on May 17, 2001. The committee substitute was distributed, (Attachment III).

Mr. Frank Folger, Committee Counsel, was recognized. He stated that the bill was re-referred at the request of Electricities and the League of Municipalities. He said that the committee substitute would declare that billing information on customers of public enterprises are not public records in the Public Records Act and not subject to the disclosure requirements for public records, but it would not prevent a city or county owning or operating a public enterprise from making public disclosure of billing information for certain purposes. Further explanation is found in the bill analysis prepared by Mr. Folger, (Attachment IV).

Representative Alexander moved adoption of the proposed committee substitute. The motion carried.

Ms. Alice Garland, Electricities, commented briefly in support of the proposed committee substitute.

Mr. Andrew Romanet, North Carolina League of Municipalities, spoke in support of the changes in the proposed committee substitute.

Committee discussion followed and several questions were raised.

An amendment was offered by Representative Blue to remove lines 5-13 on page 2 of the bill, and to rewrite lines 3-4 on page 2 to read, "Nothing contained herein shall limit disclosure by a city or county of billing information." The amendment is included in the attachments, (Attachment V). He moved adoption of the amendment. The motion carried.

Representative Alexander moved a favorable report for a new House committee substitute, incorporating the amendment. The motion carried, (Attachment VI). A copy of the revised House committee substitute is attached, (Attachment VII).

The meeting adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MAY 24, 2001

10:00 A.M.

AGENDA

SENATE BILL 774 – PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY

SENATOR TONY RAND

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 24, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCAEC
Alice Garland	Electricities
Mike Munson	DURHAM ACADEMY / REP. HACKNEY
[illegible]	Rep Sutton's Office
[illegible]	ATET
[illegible]	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 774

Rules and Operations of the Senate Committee Substitute Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S774-CSSO-41 [v.2]

5/24/2001 9:26:04 AM

Short Title: Public Enterprise Customer Billing Privacy. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax ~~information.~~information; public enterprise billing information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information – Billing information compiled and maintained by a city or county in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(1) that the city or county determines will be useful or necessary to enable the public to assess the performance and operation of the public enterprise;

(2) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies, investors, or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise; or

(3) for which public disclosure is necessary to comply with any State or federal law, rule, or regulation.

As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, relating to services it provides or will provide to the customer."

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

SENATE BILL 774:
Public Enterprise Customer Billing Privacy

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 8, 2001	**Summary by:**	Frank W. Folger
Version:	PCS for Second Edition (S774-CSSO-41)		Committee Counsel

*SUMMARY: **This bill would declare that billing information on customers of public enterprises are not public records under the Public Records Act and thus not subject to the disclosure requirements for public records, but it would not prevent a city or county owning or operating a public enterprise from making public disclosure of billing information for certain purposes.***

CURRENT LAW: Public records are defined statutorily as documentary information made or received pursuant to law or ordinance in the transaction of public business by North Carolina, its subdivisions, or agencies of either. N.C.G.S. § 132-1(a). Unless otherwise provided, these public records are subject to being disclosed and copied for anyone in the public at minimal or no cost. N.C.G.S. §132-1(b). Billing information on customers of public enterprises is encompassed by the definition of public records and thus may be copied for anyone in the public who requests and pays any minimal fee.

Public enterprises are defined in Article 16 of Chapter 160A (N.C.G.S. §160A-311) for cities and in Article 15 of Chapter 153A (N.C.G.S. §153A-274) for counties and include: electric services (cities only), water services, wastewater collection and treatment, gas production and distribution (cities only), public transportation systems, solid waste collection and disposal, cable television (cities only), off-street parking facilities and systems, airports, certain stormwater management programs and structural, and natural stormwater and drainage systems of all types.

BILL ANALYSIS: This bill would amend N.C.G.S. §132-1.1 to declare that billing information on customers of public enterprises are not public records under the Public Records Act. This provision would follow the two existing provisions in that statute regarding protection of confidential communications by legal counsel to a public board or agency and limitation on public disclosure of State and local tax information. Under this bill, public enterprises would no longer be required under the Public Records Act to disclose to or copy for the requesting public billing information of its customers. The provision does not prevent public disclosure when the city or county owning or operating the public enterprise determines it useful or necessary to allow the public to assess its performance, when the city or county owning or operating the public enterprise determines it useful or necessary for bond or investment purposes, or when it is necessary to comply with the law.

BACKGROUND: Certain public enterprises, particularly those in the electric services area, have expressed concern over the apparent requirement of the Public Records Act that they must copy customers bills for any and all in the public who asks for copies and pay the requisite fee.

PLEASE PRESS HARD - 5 COPIES

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. Second

H. B. No. _____ DATE May 24, 2001

S. B. No. 774 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S774-CSSO-41

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, lines 5 ~~6~~ - 13

( ) WHICH CHANGES THE TITLE

by removing the lines;

and on page 2, line 3-4 by rewriting the lines to read ~~"~~ "enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein shall limit disclosure by a city or county of billing information.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 774 A BILL TO BE ENTITLED AN ACT AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES.

☐ 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 D

SENATE BILL 774

Rules and Operations of the Senate Committee Substitute Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S774-PCS6292-SO-41

Short Title: Public Enterprise Customer Billing Privacy. (Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PRIVACY OF BILLING INFORMATION OF CUSTOMERS OF PUBLIC ENTERPRISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.1 reads as rewritten:

"**§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax ~~information.~~information; public enterprise billing information.**

(a) Confidential Communications. – Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105-259. As used in this subsection, "tax information" has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132-1. Nothing contained herein shall limit disclosure by a city or county of billing information. As used herein, "billing information" means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A-311 and G.S. 153A-274, relating to services it provides or will provide to the customer."

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

House Judiciary I Committee

May 31, 2001

Minutes

The House Judiciary I Committee met on Thursday, May 31, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Arnold, Blue, Blust, Clary, Redwine and Sutton. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that during floor debate, several members had expressed concerns with the House Committee Substitute for Senate Bill 719, AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY, (Attachment III). The committee substitute had received a favorable report during the Judiciary I committee meeting on May 22, 2001, but was re-referred to the committee for further discussion. He noted that Representative Connie Wilson was present to respond to any questions that the committee members might have with regard to the concerns.

Chairman Hackney said that an amendment had been prepared to remove state-owned railroads, making the bill apply only to the Triangle Transit Authority. The amendment was distributed to the committee members, (Attachment IV).

Representative Suttons moved adoption of the amendment.

Representative Blue asked if railroads did not already have the ability to enact quick-take procedures. Mr. Durwood Laughinghouse, Norfolk Southern Corporation, said that railroads do not have that authority.

Representative Blue asked if the quick-take authority would expand to those railroads whose existing rails will be used by TTA? Mr. Jack Cozort, Parker, Poe and Adams, responded that the quick-take authority would be extended only to TTA for the rail lines that they will be building and would be used only by TTA.

The amendment was adopted.

Representative Sutton moved that the amendment be rolled into a House committee substitute, that the committee substitute be given a favorable report and the Senate committee substitute be given an unfavorable report. The motion carried, (Attachment V). A copy of the House Committee Substitute is attached, (Attachment VI).

The meeting adjourned at 10:20 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MAY 31, 2001

10:00 A.M.

AGENDA

SENATE BILL 719 – TTA EMINENT DOMAIN

SENATOR WIB GULLEY

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

May 31, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Travis Hill	Rep. Sutton
[illegible]	Capitol Group
[illegible]	United Transportation Union
MIKE MUNSON	REP. HACKNEY
Jack Cocorat	PARKER POE
Don Brown	[illegible]
Casey Jones	Wabash Cannonball
Dianne Vetter	St. Francis Catholic parish, Raleigh
BARGE THOMPSON	PARKER POE ADAMS & BERNSTEIN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 719

Judiciary I Committee Substitute Adopted 4/12/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S719-PCS2264-SO-6

Short Title: TTA Eminent Domain. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemner is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemner is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), ~~(10) or (12),~~ (10), (12), or (13), or when a State-owned railroad company as defined in G.S. 124-11 is acquiring property as authorized in G.S. 40A-3(a)(5), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemner upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

SECTION 2. G.S. 124-12 reads as rewritten:

"**§ 124-12. Powers of a State-owned railroad company.**

A State-owned railroad company shall have, in addition to the powers of any railroad corporation, the power to:

(1) Lease, license, or improve property. – A State-owned railroad company may lease, license, or improve its right-of-way and property, whether held by easement, presumptive grant, express grant, or

otherwise, for the purpose of preserving and protecting its railroad corridor and franchise.

(2) Condemnation in fee simple. – A State-owned railroad company may exercise the power of eminent domain to acquire property in fee simple for the purposes specified in G.S. 40A-3(a)(4). The procedures of Article 2 of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain under this ~~subdivision.~~ subdivision, except as otherwise provided in G.S. 40A-42."

SECTION 3. This act is effective when it becomes law.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 719

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S719-ASO-20 [v.1]

Date May 31 ,2001

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Representative

moves to amend the bill on page 1, lines 3 –4, by rewriting the lines to read:
"PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY."
and on page 1, lines 14 –15, by deleting the phrase "or when a State-owned railroad company as defined in G.S. 124-11 is acquiring property as authorized in G.S. 40A-3(a)(5).";
and on page 1, line 21 through page 2, line 8, by removing the section;
and by renumbering the bill sections accordingly.

SIGNED _____
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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ **House** Committee Substitute for
S.B. 719 A BILL TO BE ENTITLED AN ACT .TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND BY A STATE-OWNED RAILROAD COMPANY.

☐ 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 #1 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 D

SENATE BILL 719
Judiciary I Committee Substitute Adopted 4/12/01
House Committee Substitute Favorable 5/22/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S719-PCS8650-SO-43

Short Title: TTA Eminent Domain. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE QUICK-TAKE PROCEDURES IN EMINENT DOMAIN PROCEEDINGS BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a) reads as rewritten:

"(a) When a local public condemner is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemner is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), ~~(10) or (12),~~ (10), (12), or (13), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemner upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

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

House Judiciary I Committee

June 19, 2001
Minutes

The House Judiciary I Committee met on Tuesday, June 19, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Dan Blue called the meeting to order and the following members were present: Representatives Arnold, Blust, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Shaw was recognized for an explanation of Senate Bill 109, AN ACT TO REQUEST THE NORTH CAROLINA SUPREME COURT TO ADOPT RULES ESTABLISHING MINIMUM STANDARDS FOR DEFENSE ATTORNEYS, PROSECUTORS, AND JUDGES HANDLING CAPITAL CASES, (Attachment III). Senator Shaw said that the bill requests the Supreme Court to adopt rules to improve North Carolina's system of capital punishment by establishing minimum standards of training and experience for defense attorneys, prosecutors, and judges involved in capital cases. He said that the rules should specify required years of legal experience, trial experience and specialized training. Senator Shaw stated that members of the Supreme Court and the Court of Appeals support the bill.

Representative Sutton asked if the Commission on Indigent Defense Services was not charged to develop similar rules, and if so, would this bill take that authority from the Commission and give it directly to the Supreme Court?

Mr. Frank Folger, Commission Counsel, replied that the Indigent Defense Services Commission was charged to develop rules affecting indigent defense attorneys and that those rules will go into effect July 1, 2001. He said that the bill could possibly require the Indigent Defense Services Commission to make changes in their rules if there were any inconsistencies. Further explanation is found in the bill analysis prepared by Ms. Susan Sitze, Committee Counsel, (Attachment IV).

Representative Sutton asked if the Supreme Court had reviewed the rules developed by he Indigent Defense Services Commission. Mr. Folger replied that he did not know. Representative Sutton said that under this bill, he felt that the Supreme Court would have the authority to direct the Commission to revise their rules if they were not consistent, or the Court, itself, could make the rules. Representative Sutton said that there should not be two sets of standards and that the ultimate authority should rest in the Supreme Court to insure that the rules are consistent.

Representative Eddins was present at the meeting and was recognized for comment. He noted that he thought that was already a provision in the law that requires minimum experience. He further said that the bill does not address the cost involved, noting that attorneys with more experience would drive the cost up.

Senator Shaw disagreed saying that the bill should reduce the number of appeals.

Mr. Folger said that in the past there has been a set fee and that the fee did not vary in terms of experience.

Representative Eddins stated that he would like to see the displaced for further study.

Representative Sutton moved that the bill be given a favorable report. The motion carried, (Attachment V).

Senator Forrester was recognized for an explanation of Senate Bill 390, AN ACT REQUIRING THE NORTH CAROLINA MEDICAL BOARD TO IMPLEMENT POLICIES TO TRAIN AND EDUCATE PERSONS LICENSED TO PRACTICE OR PERSONS DESIRING TO PRACTICE MEDICINE IN THIS STATE ON ISSUES RELATED TO PHYSICIAN-ASSISTED SUICIDE AND CREATING THE CRIMINAL OFFENSE OF PHYSICIAN-ASSISTED SUICIDE, (Attachment VI). Senator Forrester stated that the bill encourages better education of physicians in pain management, the use of hospice and palliative care and addresses physician-assisted suicide. Senator Forrester stated under the bill, the penalty for a physician-assisted suicide would be a Class D felony. He said that many groups including the American Medical Association, the North Carolina Medical Society, and the American Nurses Association support the bill. Senator Forrester distributed a packet of information to the members of the committee. It is included in the attachments, (Attachment VII).

Mr. Rick Zechini, Committee Counsel, said that the bill does provide for some exceptions including carrying out the wishes expressed in a living will or an advanced medical directive. The bill also does not prevent the licensed healthcare professional from providing medication to alleviate pain even if prescribing the medication may also indirectly expedite the dying process. Additional explanation is found in a bill analysis prepared by Mr. Zechini, (Attachment VIII).

Representative Sutton asked if physicians might back off from administering medication to terminally ill patients in the last phase of their lives because of the bill even though the bill states that this can be done.

Senator Forrester replied that he felt the legislation would help physicians in this respect.

Committee discussion followed

Ms. Deborah Ross, American Civil Liberties Union, was recognized and said that almost everything that the bill criminalizes is already a crime in North Carolina.

Senator Forrester stated that the medical community supports the bill.

Ms. Judi Person, Carolinas Center for Hospice and End of Life Care, spoke in support of Section 1 of the bill regarding training and education, but stated that her organization did not support Section 2 of the bill.

Mr. Joseph Liberal, Association for Home and Hospice Care spoke in support of the bill.

Mr. Christian Polking, North Carolina Right to Life, spoke in support of the bill.

No action was taken on the bill. Vice Chair Blue noted that the bill would be placed on an upcoming agenda of the Judiciary I committee.

The meeting adjourned at 10:55 a.m.

Representative Dan Blue
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JUNE 19, 2001
10:00 A.M.

AGENDA

SENATE BILL 109 – REQUIRE EXPERIENCE FOR DEATH PENALTY CASES
SENATOR BOB SHAW

SENATE BILL 390 – PHYSICIAN-ASSISTED SUICIDE/EDUCATION & CRIME
SENATOR JIM FORRESTER

SENATE BILL 951 – PREVENT UNNECESSARY FILING OF BRIEFS
SENATOR FOUNTAIN ODOM

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 19, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay J. Chaudhuri	DOJ
Angela Kyrakis	NCPPC
[illegible]	ACLU
David Weiss	ACLU
Bill Wilson	NCATL
Christian Polking	NC RTL
Rev. Mark Creech	CAL
DAVID BARNES	Poyner + Spruill, LLP
JOE LIBERTI	Assoc. Home + Hospice Care
Jo McCants	AOC
Jim Drennan	IOG
Amy Fullbright	Hunton & Williams
Alison Benge	Hunton & Williams
Jamie Lyle	Hunton + Williams
Chris Ayers	Hunton + Williams
HAROLD H. Webb	NCADA
Chr. Fitzsimon	Common Sense Foundation
[illegible] Russell	CYK
John Goodman	Linwood Mercer & Assoc.
Jamie Hunsinger	Carolinas Center for Hospice + End of Life Care
Jedi Lead Lyerly	Carolinas Ctr for Hospice + End of Life Care
[illegible]	AOC
John A. Yancey	CCHILC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 109
Judiciary I Committee Substitute Adopted 4/23/01

Short Title: Require Experience for Death Penalty Cases. (Public)

Sponsors:

Referred to:

February 8, 2001

A BILL TO BE ENTITLED

AN ACT TO REQUEST THE NORTH CAROLINA SUPREME COURT TO ADOPT RULES ESTABLISHING MINIMUM STANDARDS FOR DEFENSE ATTORNEYS, PROSECUTORS, AND JUDGES HANDLING CAPITAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. The Supreme Court is respectfully requested to adopt rules to improve North Carolina's system of capital punishment by establishing minimum standards of training and experience for court-appointed defense attorneys, prosecutors, and judges handling capital cases. These rules should specify the minimum number of years of legal experience and the minimum amount of felony case experience required of any court-appointed defense attorney, prosecutor, or judge participating in the trial of a capital case, and may also require specialized training in capital case litigation for any or all of those participants in capital trials.

SECTION 2. G.S. 7A-498.5(c) reads as rewritten:

"(c) The Commission shall develop standards governing the provision of services under this Article. The standards shall include:

(1) Standards for maintaining and operating regional and district public defender offices and appellate defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;

(2) Standards prescribing minimum experience, training, and other qualifications for appointed counsel;

(3) Standards for public defender and appointed counsel caseloads;

(4) Standards for the performance of public defenders and appointed counsel;

(5) Standards for the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts;

(6) Standards for providing and compensating experts and others who provide services related to legal representation;

(7) Standards for qualifications and performance in capital ~~cases;~~ cases, consistent with any rules adopted by the Supreme Court; and

(8) Standards for determining indigency and for assessing and collecting the costs of legal representation and related services."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 109:
Require Experience for Death Penalty Cases

BILL ANALYSIS

Committee:	House Judicisry I	**Introduced by:**	Senator Shaw
Date:	June 19, 2001	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: This bills requests the North Carolina Supreme Court to adopt rules establishing minimum standards for defense attorneys, prosecutors, and judges handling capital cases.

BILL ANALYSIS: The bill requests the Supreme Court to adopt rules designed to improve the State's capital punishment system by establishing minimum standards of training and experience for defense attorneys, prosecutors, and judges involved in capital cases. The request is that the rules should specify required years of legal experience, trial experience, and specialized training.

The bill amends the statute covering the responsibilities of the Commission on Indigent Defense Services to reflect rules created by this request. The Commission on Indigent Defense Services is charged with creating rules for attorneys representing indigent defendants, including capital cases. This bill would require those rules to be consistent with any rules created by the Supreme Court.

The bill goes further than the rules created by the Commission on Indigent Defense Services in that it requests the Supreme Court to also develop rules for prosecutors and judges in capital cases.

Effective Date: When it becomes law.

**This summary modified from a summary originally written by Al Andrews, Legislative Attorney, Research Division*

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 109 A BILL TO BE ENTITLED AN ACT TO REQUEST THE NORTH CAROLINA SUPREME COURT TO ADOPT RULES ESTABLISHING MINIMUM STANDARDS FOR DEFENSE ATTORNEYS, PROSECUTORS, AND JUDGES HANDLING CAPITAL CASES.

☒ 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 House committee substitute #1 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 390
House Committee Substitute Reported Without Prejudice 5/24/01

Short Title: Physician-Assisted Suicide/Education & Crime. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT REQUIRING THE NORTH CAROLINA MEDICAL BOARD TO IMPLEMENT POLICIES TO TRAIN AND EDUCATE PERSONS LICENSED TO PRACTICE OR PERSONS DESIRING TO PRACTICE MEDICINE IN THIS STATE ON ISSUES RELATED TO PHYSICIAN-ASSISTED SUICIDE AND CREATING THE CRIMINAL OFFENSE OF PHYSICIAN-ASSISTED SUICIDE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Medical Board shall implement the following policies:

(1) Encourage persons licensed to practice medicine in this State to receive continuing education from the North Carolina Medical Society on the topic of pain management.

(2) Encourage all schools of medicine in this State to develop a curriculum and train students regarding pain management, palliative care, and the use of hospice care.

(3) Advise persons licensed to practice medicine in this State of the Board's policies relating to prescribing adequate amounts of medicine to patients with terminal diseases.

SECTION 2. Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-17.2. Physician-assisted suicide.**

(a) The following definitions apply in this section:

(1) Licensed health care professional. – A duly licensed physician, surgeon, podiatrist, osteopath, osteopathic physician, osteopathic surgeon, optometrist, chiropractor, physician assistant, nurse, dentist, or pharmacist.

(2) Physician-assisted suicide. – The act of a licensed health care professional participating in a medical procedure or willfully prescribing any drug, compound, or substance for the express purpose

of assisting a patient to intentionally end the patient's life. The term does not include a person participating in the execution of a person sentenced by a court to death by lethal injection.

(b) It is unlawful for any licensed health care professional to commit the offense of physician-assisted suicide.

(c) Any licensed health care professional who violates this section is guilty of a Class D felony.

(d) None of the following shall be construed as a violation of this section:

(1) Carrying out the provisions of advanced directives or living wills.

(2) The withholding or withdrawing of a life-sustaining procedure or compliance with any other State or federal law authorizing withdrawal or refusal of medical treatments or procedures.

(3) The administering, prescribing, or dispensing of medications or procedures, by or at the direction of a licensed health care professional, for the purpose of alleviating another person's pain or discomfort, even if the medication or procedure may increase the risk of death as long as the medication or procedure is not also intentionally administered, prescribed, or dispensed for the purpose of causing death, or the purpose of assisting in causing death for any reason.

(4) The administering, prescribing, or dispensing of medications or procedures to a patient diagnosed with a medical condition that includes an element of suicidal ideation, even if the medication or procedure may increase the risk of death as long as the medication or procedure is not also intentionally administered, prescribed, or dispensed for the purpose of causing death, or the purpose of assisting in causing death for any reason."

SECTION 3. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

ATTACHMENT VII

SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN, L.L.P.

LAWYERS

B. Davis Horne, Jr.

OFFICES
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Raleigh, North Carolina 27601

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MAILING ADDRESS
P.O. Box 2611
Raleigh, North Carolina
27602-2611

TELEPHONE: (919) 821-6680
FACSIMILE: (919) 821-6800

June 18, 2001

The Honorable James S. Forrester
North Carolina Senate
1121 Legislative Building
Raleigh, North Carolina 27601

Re: S 390 – Physician Assisted Suicide

Dear Sen. Forrester:

The North Carolina Medical Society's house of delegates adopted policy in 1992 opposing physician assisted suicide. A copy of that policy in its entirety is restated below:

> RESOLVED, That the North Carolina Medical Society promote physician awareness of their patients' overwhelming need to be adequately and effectively relieved of the physical and psychological pain that can accompany terminal and incurable illness; and be it further
>
> RESOLVED, That the North Carolina Medical Society oppose physician-assisted suicide.
>
> *(Substitute Report PP-1992, adopted 11/8/92)*

As you can see from the reference, the policy is based upon an executive council report. The report dealt largely with the problems arising from extraordinary pain and the need to manage it aggressively. Accordingly, the House of Delegates chose to include a reference to patient suffering and the need for physician sensitivity to physical and psychological pain that may accompany terminal and incurable illness.

The North Carolina Medical Society supports your efforts to make physicians more aware of their over-riding obligation to do no harm and to prevent physician assisted suicide.

With highest regards, I am

Very truly yours,



B. Davis Horne, Jr.

Beverly LaHaye
Chairman

Mary Frances Forrester
State Director

CWA-NC

Physician Assisted Suicide
HB 390

Distinguished members of the House Judiciary I Committee: Thank you for reading this information from Concerned Women For America and Concerned Women For America of North Carolina on House Committee Substitute Bill 390 banning Physician Assisted Suicide.

Concerned Women for America is the largest women's public policy organization in the nation with over 500,000 women (and like minded men) who are committed to Judeo-Christian cultural values. **Concerned Women For America of North Carolina (CWA-NC) has over 14,000 at large bi-partisian supporters**.

As the State Director of CWA-NC since 1999, I am here to speak in favor of HB390 banning physician- assisted suicide in North Carolina.

According to medical ethics, physician assisted suicide is diametrically opposed to the Hippocratic Oath in which most physicians vow. It states the physician will " do no harm" or "give no deadly medicine to anyone if asked." That oath dates to 400 B.C. and formed the basis of the practice of medicine because it gave the profession its sense of duty to mankind. It applied logic and reason to medicine and made the practice of medicine honorable. Keeping the oath promised the physician the clear conscience to enjoy life as a healer and be respected by all men at all times.

Just as significant, physician assisted suicide also breaks the 6th Commandment of God as given to Moses, "Thou Shalt Not Kill."

If the physician is released from these oaths, it gives him an open door policy to help patients die. He is an indirect *stealth killer* with impunity; promoting death without legal consequences, and, above the law.

As reported in the New England Journal of Medicine, Netherland statistics reveal in Dutch deaths involving medical intervention to assist ending life, an astounding 76% did not involve an explicit patient request for death. How did that come to be? Because the practice of physician assisted suicide ever so gradually progressed to a secular approach that went from *patient "choice"*, to *expedient "choice", to predetermined "choice."* I refer you to the January- February 2001 Issue of CWA *FAMILY VOICE,* for further information on the practice of Dutch "bedrooming", a euphanism for making beds ***available*** from time to time.

CONCERNED WOMEN FOR AMERICA
OF NORTH CAROLINA

P.O. Box 758 • Stanley, North Carolina 28164 • (704) 263-1774 • (704) 263-0558 Fax • Mmax837621@aol.com

Holland is the warning signal for the rest of the world. It is a warning for North Carolina.

I raise another question, *if the physician places the the lethal dose of medicine in the hands of the patient or family members, who is to say who will admininster it?* In Oregon, the law shields these details from public access. But some truths have leaked out, including assisted suicides slipping into homicides. In one instance, the family member suspected of murder had the ***supposed*** suicide victim cremated within 24 hours to eliminate questions of circumstance. In an unguarded moment, one Oregon (physician assisted suicide) advocate revealed a botched assisted suicide. The victim landed in the Emergency Room and finally a nursing home. This case never showed up in the report of more than 40 Oregonians who have so far died through this secretive state- sanctioned program.

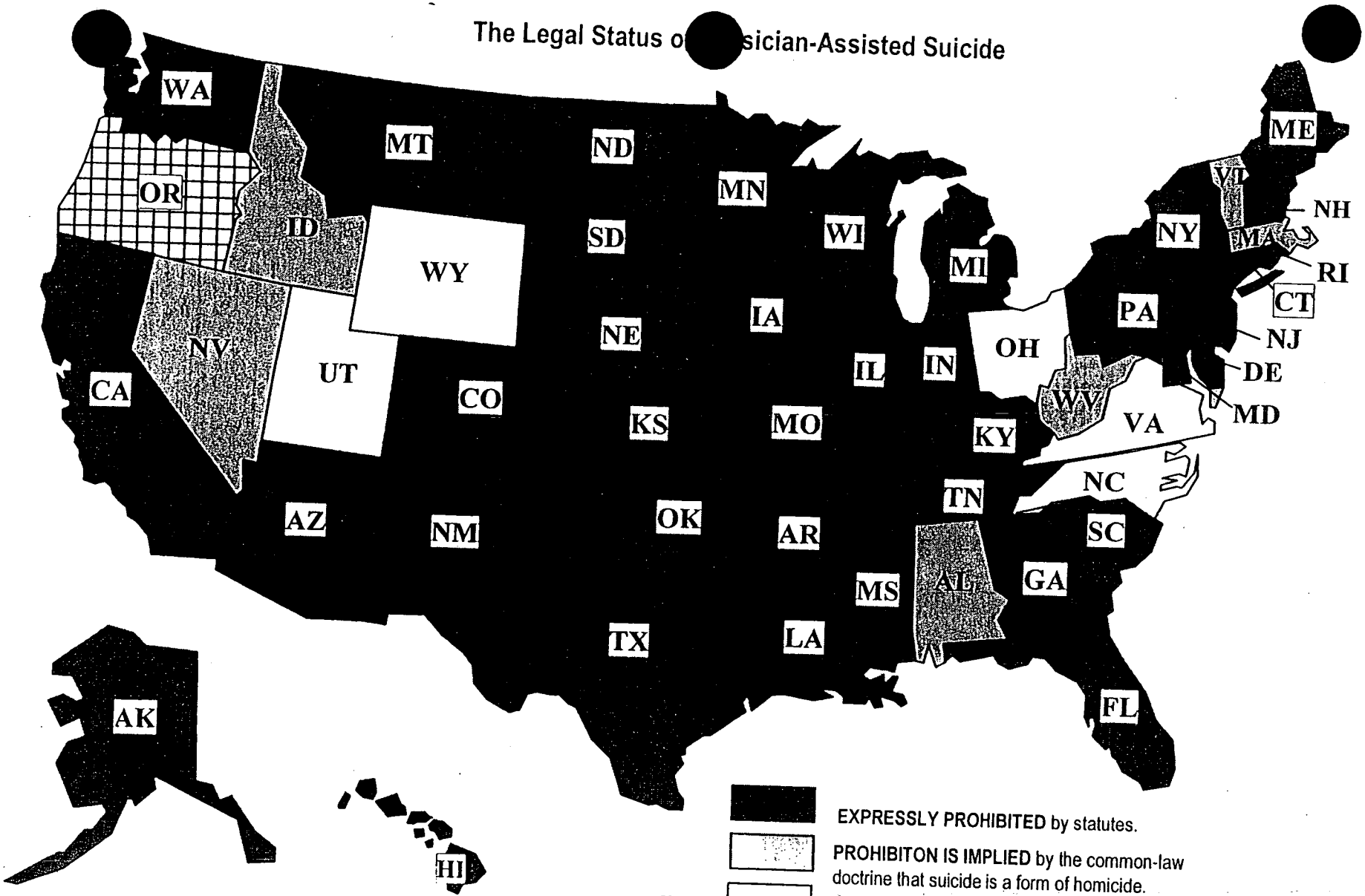
On a very personal level, suppose you or your spouse is diagnosed with a disease, maybe a terminal one. Depression follows, which can be a natural consequence. Would you want the added agony of wondering about the mindset of your physician? And could you really trust his counsel through treatment if he was free to dispense deadly doses with impunity? Over time, could a suicide request be merely *perceived?* Last Oct. 30, a Dutch Court acquitted a doctor who assisted with suicide for a depressed patient who was not physically suffering. The Dutch moved to officially legalize euthanasia (April 11, 2001) hoping to curb abuses. Dutch families NEVER leave family members in the hospital unattended. As of April 11th, I believe that fear will only intensify.

In 1977, the U.S. Supreme Court ruled physician assisted suicide was **not** a constitutional right. **It is illegal in 40 states.** With the continued secularization of society, this is a slippery slope incongruous with the North Carolina motto, "To be rather than to seem."

Concerned Women for America encourages you to give this bill a favorable report.

Thank you for your time.
Mary F. Forrester
Mary Frances Forrester

The Legal Status of Physician-Assisted Suicide



MAR 27 2001

Diocese of Raleigh — Office of the Bishop
715 Nazareth Street • Raleigh, North Carolina 27606-2187 • (919) 821-9702 • Fax: (919) 821-9705

March 23, 2001

The Honorable James Forrester
North Carolina General Assembly
Legislative Building, Room 1121
Raleigh, NC 27601-2808

RE: Senate Bill 389
Create the Criminal Offense of Physician-Assisted Suicide

Dear Senator Forrester,

I would like to thank you for your co-sponsorship of Senate Bill 389, an Act to Create the Criminal Offense of Physician-Assisted Suicide. I find this to be a potentially life saving piece of legislation that deserves your support.

Protecting innocent human life is one of the primary purposes of law in an ordered society. Allowing assisted suicide would demean the lives of vulnerable patients and expose them to exploitation by those who feel they are better off dead. The voiceless or marginalized in our society – the poor, the frail elderly, racial minorities, millions of people who lack health insurance – would be the first to feel pressure to die. This bill will give protection to these people.

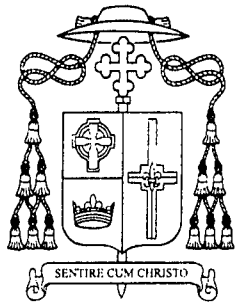
Suicidal wishes among the terminally ill are no less due to treatable depression than the same wishes among the able-bodied. When their pain, depression and other problems are addressed, there is generally no more talk of suicide. If we respond to a death wish in one group of people by offering them lethal drugs, we have made our own tragic choice as a society that some people's lives are objectively not worth protecting. This bill sends the clear message that North Carolina wants to safeguard all her citizens.

Please continue to give the Act to Create the Criminal Offense of Physician-Assisted Suicide your full support.

Sincerely,

F. Joseph Gossman

F. Joseph Gossman
Bishop of Raleigh



OFFICE OF THE BISHOP

April 3, 2001

Senator Robert C. Carpenter
North Carolina General Assembly
Legislative Office Building, Room 517
Raleigh, NC 27601-2808

RE: Senate Bill 389
Create the Criminal Offense of Physician Assisted Suicide

Dear Senator Carpenter,

Thank you for your co-sponsorship of Senate Bill 389, an Act to Create the Criminal Offense of Physician Assisted Suicide. The people this legislation would protect are some of the most defenseless in our society.

Many people with disabilities have long experience with prejudicial attitudes on the part of able-bodied people, including some physicians, who say they would "rather be dead than disabled." Such prejudices could easily lead families, physicians and society to encourage death for people who are depressed and emotionally vulnerable as they adjust to life with a serious illness or disability.

In November of 1998 the National Council of Catholic Bishops spoke of the need to honor and respect individuals with disabilities. In this letter titled "Welcome and Justice for Persons with Disabilities," we the Catholic Bishops of the U.S.A. spoke as one voice proclaiming: *Our defense of life and rejection of the culture of death requires that we acknowledge the dignity and positive contributions of our brothers and sisters with disabilities. We unequivocally oppose negative attitudes toward disability, which often lead to euthanasia, medical rationing and abortion.*

The American Medical Association has also taken a stand against Physician Assisted Suicide. In a November 8, 2000 press release among others, the AMA "...endorsed physicians' fundamental obligation to 'do no harm'...". They said physician assisted suicide introduces, "(a) deep ambiguity into the very definition of medical care."

Please continue to give the Act to Create the Criminal Offense of Physician Assisted Suicide your full support.

I am with sentiments of respect,

warm personal regards

Sincerely,

+William G. Curlin

William G. Curlin
Bishop of Charlotte

Diocese of Charlotte • 1123 S. Church Street • Charlotte, NC 28203 • (704) 377-6871

Recycled Paper

Physician-Assisted Suicide

RESOLVED, That the North Carolina Medical Society promote physician awareness of their patients' overwhelming need to be adequately and effectively relieved of the physical and psychological pain that can accompany terminal and incurable illness; and be it further

RESOLVED, That the North Carolina Medical Society oppose physician-assisted suicide.

(Substitute Report PP-1992, adopted 11/8/92)

EDITORIALS

Dutch doctors given a license to kill

The Dutch have just appointed their physicians doctors of death. The Senate in the Netherlands voted to pass a law two weeks ago allowing hysicians to end patients' lives if they ave terminal "unbearable suffering." In) doing, the Netherlands has become the rst country to legalize assisted suicide nd to turn medicine from the purpose of ealing to one of killing.

According to the new law, a patient has) request that they want to be killed, and ıen have two doctors prescribe the same solution." How does the doctor know that ıe patient qualifies? If the doctor deems ıere is no other medical treatment, then he doctor will have to try to imagine what ıe patient is feeling . . ." to determine hether his suffering is unbearable, :cording to the embassy of the Nether-nds. The "right to die" now becomes a atter of the doctor's ability, or lack there-', to get inside the patient's body to feel his ain.

But isn't the doctor just following rough on the patient's own informed :sire to die? Not necessarily. Doctors can :cide to kill willing patients aged 12 and)ove, those suffering from psychological nesses and those suffering from demen-ı, the most common form of which is lzheimer's disease. The doctor decides whether to kill the patient on a case by case basis "in light of prevailing medical opinion." What has been the history of prevailing medical opinion in the Netherlands? In many cases, the patient's "willingness" to be killed has not been a precondition. For instance, the Dutch's government's 1991 euthanasia report cites 1,040 people who were killed by doctors who did not have a request from the patient. Another 8,100 deaths were not reported as assisted suicide, but resulted from doctors prescribing drug overdoses to bring death. It is estimated that around 3,500 patients have been killed a year for the past decade through euthanasia. For the past 20 years, doctors could not be charged for what was on the books as a criminal offense because of an arrangement with prosecutors that prevented the jail time as long as they followed certain guidelines.

So why go to the trouble of legalizing a common practice? The new law, a Dutch embassy official said, makes the doctors innocent until proven guilty, while the old arrangement assumed the doctor's guilt until proven otherwise. The embassy's web site explained further: "The aim of exempting doctors from prosecution is to ensure that they no longer feel like criminals and can act openly and honestly in relation to requests for euthanasia, provided that their decision-making and medical procedures satisfy the statutory due care criteria."

> If the doctor deems there is no other medical treatment, then "the doctor will have to try to imagine what the patient is feeling . . ." to determine whether his suffering is unbearable. The "right to die" becomes a matter of the doctor's ability, or lack thereof, to get inside the patient's body to feel his pain.

All this killing was, so to speak, giving a few doctors indigestion. They were killing, and felt like murderers. So the Dutch legislators wrote up a little guilt-free prescription for more of the same. Now, the new law's advocates argue, the euthanasia review committees (appointed by the minister of justice and the minister of health, welfare and sport) will make sure the doctors only kill patients matching all the due care criteria put forth by the new law. The only problem is, the patient is long dead by the time the review committee would notify the Public Prosecution Service.

For Europe, all this has haunting implications. From the religious community to politicians to the press, there was an outcry in Germany against a government-approved euthanasia practice. While the Nazis secretly eliminated 100,000 men, women and children who were physically or mentally handicapped between 1939 and 1941, the Dutch are now openly embracing the killing of children, the aged, and the psychologically challenged. Among the victims of the Nazi regime were the Dutch themselves.

Dutch parliamentarians have shown they have decided not to remember those lessons. With this new law, life in the Netherlands has been cheapened.

mens on sovereign states. Naturally, France was the prime mover. It and other European tax-happy, welfare nations have long cast a jaundiced eye on those who don't squeeze their citizens' pocketbooks sufficiently. Look at the European Union's constant berating of Ireland for its policies of cutting taxes.

O'Neill made clear the U.S. would vigorously pursue genuine tax cheats and fight criminal money-laundering efforts. But he rightly saw the distinction between those laudable goals and the less-than-laudable efforts to force low-tax countries to impose more exactions on their citizens.

DUTCH DEATH

A COUPLE OF MONTHS AGO THE NETHERLANDS BECAME THE first democracy in history to allow its doctors to kill their patients. The law codifies what has been going on in that country for a generation. There are rules that are supposed to be observed before a physician can snuff out a patient's life—i.e., children must be at least 12; patients must request to die; a second doctor must independently verify the request. But in practice half the victims are murdered without having requested death, ostensibly because the physician believes the patient's quality of life to be suffering, but often it is to reduce health care expenses. Why work to prolong the life of someone who will die in a few months anyway? Many people who are doctor-killed are suffering from depression; they're not souls undergoing insufferable physical agony. No wonder a growing number of elderly Dutch fear going to the hospital. Their country is developing an environment in which the will to live is increasingly being labeled as selfish.

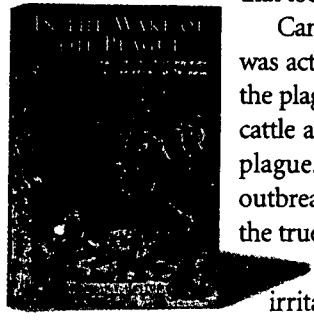
Not only the elderly are at risk. Babies born with physical or mental handicaps, even treatable ones, are being killed shortly after birth. Doctors are also "euthanizing" terminally ill children and mental patients. A decade ago the Dutch government estimated that nearly one in ten of its citizens who died were killed by their doctors. The ratio is probably higher now.

The chairman of the conference of Germany's Roman Catholic bishops, Cardinal Karl Lehmann, rightly accused the Netherlands of adopting a "culture of death." German physicians vigorously denounced the Dutch move. They know all too well from their own country's history what the implications of their neighbor's actions are. Before WWII, Nazi Germany secretly killed thousands of mentally or physically handicapped people. What a murderous irony it is that during WWII Dutch doctors heroically resisted Nazi pressures to practice euthanasia. Now the heirs of those physicians are doing it to a degree that would have won the applause of the Gestapo and the SS.

May the rest of us avoid the bleak, antilife society the Dutch are creating.

BLACK DEATH

In the Wake of the Plague—by Norman F. Cantor (The Free Press, $25). In the late 1340s Europe suffered a catastrophe the equivalent of a nuclear war. Within months, a third to half of the population died from the "Black Death." This wee book examines the impact of the plague on European civilization, most particularly England, whose population did not reach preplague levels for another 400 years. The pandemic greatly accelerated the already-unraveling system of serfdom; labor became critically short, emboldening peasants to shuck off their manorial servitude and demand a stiff increase in their compensation. England's dream of forging a major European continental empire was fatally undermined; its military machine depended on infantry, which in the aftermath of the plague became prohibitively costly. The plague led to a fatal split in England's ruling Plantagenet family, resulting in the War of the Roses. And Jews, scapegoated for the disaster, were hideously massacred in numerous parts of Europe.



Land, of course, was at the heart of medieval economics. Land disputes were enormously exacerbated by families fighting from within over who owned what, when many heirs suddenly died. Complex land litigation lead to the property law that today dominates Britain and much of the West.

Cantor cites growing evidence that the plague was actually two diseases raging simultaneously—the plague and deadly anthrax, which originates in cattle and at onset has the same symptoms as the plague. He also discusses possible causes of the outbreak, underscoring how little we know about the true sources of sudden, devastating epidemics. This book, alas, is marred by the author's irritating, snide asides.

RESTAURANTS: GO, CONSIDER, STOP

Here is the distilled wisdom of brothers Bob, Kip and Tim, and other FORBES *eatery experts Tom Jones, Patrick Cooke and Monie Begley.*

Chez Josephine—414 West 42nd St. (Tel.: 594-1925). Perfect for out-of-towners—a bordello-interioried homage to Josephine Baker that's sort of French, sort of soul food. Favorite: Elvira's fried chicken with sweet potato fries and red pepper corn bread.

Métisse—239 West 105th St. (Tel.: 666-8825). Unpretentious, charming, friendly bistro with efficient service. The food, however, is not up to the charm.

Seo—249 East 49th St. (Tel.: 355-7722). Tranquil Japanese setting with a garden. The menu is wonderfully varied and creative. The fare is delicious, especially the udon and soba noodles. F

SENATE BILL 390:
Education on Physician-Assisted Suicide

BILL ANALYSIS

Committee:	House Judiciary I Committee	**Introduced by:**	Senators Forrester and Purcell
Date:	June 19, 2001	**Summary by:**	Rick Zechini
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 390 provides that it is unlawful for a licensed health care professional to assist a patient in intentionally ending the patient's life and requires the North Carolina Medical Board to encourage persons who are licensed, or wish to be licensed, to practice medicine in the State to pursue training and education on issues related to physician-assisted suicide.***

CURRENT LAW: Currently there is no statute in North Carolina that makes assisting in a suicide unlawful.

BILL ANALYSIS: **Section 1** requires the North Carolina Medical Board to implement the following policies:

- Encourage continuing education on the topic of pain management for those licensed to practice medicine in the State.
- Encourage medical schools in the State to train students regarding pain management, palliative care, and hospice care.
- Advise those licensed to practice medicine in the State on the Board's policies regarding prescribing adequate amounts of medication for terminally ill patients.

Section 2 creates G.S. 14-17.2, which provides that it is unlawful for a licensed health care professional, as defined in section 14-17.2, to assist a patient in intentionally ending the patient's life. "Physician-assisted suicide" is defined as the act of a licensed health care professional either participating in a medical procedure or willfully prescribing any drug, compound, or substance for the express purpose of assisting a patient in intentionally ending his or her life. Senate Bill 390 provides that physician-assisted suicide is a Class D felony, which requires an active sentence of between 38 and 229 months depending on an offender's prior record level. G.S. 14-17.2(d) specifies that the following acts are not violations of the statute:

- Carrying out provisions of advanced directives or living wills.
- Withholding or withdrawing life sustaining procedures or complying with any law that authorizes refusal of medical treatment.
- Administering, prescribing, or dispensing medications or procedures by or at the direction of a licensed health care professional to alleviate pain, even when they may increase the risk of death, as long as the purpose is not to cause death.
- Administering, prescribing, or dispensing medications or procedures to patients diagnosed with conditions that include an element of suicidal ideation, even when it may increase the risk of death, as long as the purpose is not to cause death.

EFFECTIVE DATE: The act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

House Judiciary I Committee

June 21, 2001

Minutes

The House Judiciary I Committee met on Thursday, June 21, 2001 at 1:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Clary, Insko, Nesbitt, Sutton and Walker. Representative Earle, Ex-officio member of the committee also attended. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The committee continued discussion of Senate Bill 173, AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH. The bill was previously discussed during the May 1, 2001 meeting of the committee.

A proposed House committee substitute was distributed, (Attachment III), and Representative Alexander moved that it be adopted for the purpose of discussion. The motion carried.

Senator Ballance and Representative Sutton commented briefly on the new version of the bill and deferred to committee staff for comment on the changes.

Ms. Susan Sitze, Committee Counsel, was recognized. She commented on the following changes. The definition of "mentally retarded" was tightened to mean a condition established by a scientific, standardized IQ test score of 70 or below, plus evidence before the age of 18 of significant limitations in daily functioning. Under the House version, upon motion of the defendant, supported by appropriate affidavits, the court may order a pre-trial hearing to determine mental retardation. The court shall order such a hearing with the consent of the state, or upon the finding that such a pre-trial hearing is in the best interest of justice and will promote judicial economy and judicial efficiency. The defendant has the burden of production and persuasion and the standard is clear and convincing evidence. If the court finds that the defendant is mentally retarded, the defendant is not subject to the death penalty, and the sentence would be life imprisonment.

Ms. Sitze said that the previous version basically required a pre-trial hearing if the defendant made the motion and the burden of proof was by a preponderance of the evidence. The previous version allowed for immediate of appeal for both the defendant and the state depending on the outcome of the pre-trial hearing. The House version removes the provision for immediate appeal of the pre-trial hearing. Instead, the House version allows that if the court does not find that the defendant is mentally retarded during the pre-trial proceeding, the defendant may introduce evidence during the trial regarding his mental retardation, and after the determination of guilt, but prior to the sentencing hearing, the court will submit a special issue to the jury. The jury will then consider whether or not they believe the defendant is mentally retarded. If the jury finds that the defendant is mentally retarded, the court must determine that it is not a capital trial and sentence the defendant to life imprisonment. The standard for jury

determination of mental retardation in the House version is a preponderance if the evidence. The pre-trial standard is clear and convincing evidence.

Ms. Sitze said that part of the original Senate bill, giving the district attorneys discretion regarding capital sentencing, was removed because the measures have passed in other legislation before the General Assembly and has been signed by the governor. A bill analysis, prepared by Ms. Sitze, is attached, (Attachment IV).

Committee discussion followed.

Mr. Robert Johnson, District Attorney, Alamance County, said that the district attorneys would like to see a change in the language regarding the definition of significantly sub average intellectual functioning.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, was in agreement with this suggestion.

Representative Sutton offered an amendment to rewrite the "significantly sub average intellectual functioning," (Attachment V), and moved its adoption. The motion carried.

Representative Sutton was recognized to discuss the pre-trial hearing and the standard for having such a hearing. He said that the district attorneys seem to favor language that would allow for such a hearing to take place only with the consent of the State.

Mr. Johnson Britt, District Attorney, Robeson County, spoke in opposition to the pre-trial hearing language.

Mr. Taylor spoke in support of the language and noted that 15 states have passed bills to outlaw the death penalty for mentally retarded persons. He said that 9 of those states have the judge decide prior to the trial whether the person is mentally retarded, or not. He said that the states that allow this to be a jury question have a judge-override statute, which is a type of death penalty statute that North Carolina does not have.

Senator Ballance said that his preference would be to file the motion, present evidence, and let the judge rule.

Representative Arnold offered an amendment, (Attachment VI), and moved its adoption. The amendment would remove the right for a pre-trial hearing without consent of the district attorney.

Representative Sutton spoke in opposition to the amendment.

Following discussion, the motion was before the committee. Upon voice vote, division was called. After a show of hands, it was determined that the amendment failed.

Discussion followed regarding the special issue to the jury

Mr. Britt recommended that subsection (e) on page 2 be eliminated from the bill.

An amendment was prepared to eliminate subsection (e) on page 2 of the bill and Chairman Hackney asked if a member of the committee wished to offer the amendment.

Following lengthy discussion, Ms. Sitze clarified the options being suggested. She said that one option being discussed is the language that is presently in the bill, but that this language might not do exactly what it is intended to do. This option would have the issue of mental retardation decided by the jury at the same time that guilt is determined. If the jury determined the defendant to be mentally retarded, the sentence would be life imprisonment.

Ms. Sitze said that the option preferred by the district attorneys is one in which would be one in which mental retardation could be determined in the sentencing phase. When the jury goes to consider sentence, they would first decide whether the defendant is mentally retarded. If the defendant were found to be mentally retarded, the sentence would be life imprisonment.

Ms. Sitze said that the third option would be to have a separate trial between the guilt and sentencing phases.

Senator Ballance expressed agreement for the language favored by the district attorneys that would provide for a sentencing phase where a special issue would be submitted to the jury after guilt or innocence has been determined.

Discussion followed regarding burden of proof.

Chairman Hackney asked for a show of hands of the members who were in agreement with the unanimity language as to whether the defendant is mentally retarded, as set forth on lines 18-20 on page 2. The members showed support to keep the language.

Chairman Hackney instructed Ms. Sitze to prepare a new version of the bill to incorporate the suggestions made during the meeting.

The meeting was adjourned at 2:30 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, JUNE 21, 2001
10:00 A.M.

AGENDA

SENATE BILL 173 – NO DEATH PENALTY/MENTALLY RETARDED
SENATOR FRANK BALLANCE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

June 21, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill/Dianne Vetter	
Sally Cameron	NC Psychological
Lito Rubbert	CSPC
Andrew Short PhD	NC Psychological
Ken Rose	CDPL
John McMullan	MFHS P.A.
Barbara Carsten	MFHS P.A.
MT Burnette	GACPD
Jennifer Dinion	Citizen
Jennifer Sullivan	NAMI W. NC
John McHugh	Gov Office
J.R. Sharpe	ACLU
Dan Taylor	Honda MA
Gerda Stein	Raleigh
Chris Fitzsimon	Common Sense Foundation
Travis Hill	Rep. Sutton's office
Mickey Fanney	Rep Baddour
Sue Cleeton	NCVAN
Donna Lycott	NCVAN
[illegible]	District Attorney 15-A (Alamance)
[illegible]	District Attorney 11th B Robeson
Scott Brewer	Sr. Asst. District Attorney — (20th District)
STUART ALBRIGHT	Dist. Attorney 18th (Guilford Co.)
BRANNY VICKORY	DA - 8th District
Jack Cozart	PARDON BOE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 173*

Corrected Copy 2/20/01

Judiciary II Committee Substitute Adopted 4/19/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S173-CSSA-27 [v.2]

6/21/2001 9:08:53 AM

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, with the onset occurring before the age of 18.

(2) Significantly subaverage intellectual functioning. – An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pre-trial hearing to determine if the defendant is mentally retarded. The court shall order such a hearing with the consent of the State or upon a finding that such a pre-trial hearing is in the best interest of justice, and will promote judicial economy and administrative efficiency. The defendant has the burden of production and persuasion to demonstrate mental retardation by clear and convincing evidence. If the court determines the defendant to be mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find the defendant to be mentally retarded in the pretrial proceeding, upon the introduction of evidence of the defendant's mental retardation, the court shall submit a special issue to the jury, after the guilt determination and before the sentencing hearing, as to whether the defendant is mentally retarded as defined in this section. If the jury determines the defendant to be mentally retarded, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate mental retardation to the jury by a preponderance of the evidence.

(g) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

SECTION 2. G.S. 15A-2000(b) reads as rewritten:

"(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge to be warranted by the evidence shall be given by the court in its charge to the jury prior to its deliberation in determining sentence. The court shall give appropriate instructions in those cases in which evidence of the defendant's mental retardation requires the consideration by the jury of the provisions of G.S. 15A-2004. If the jury cannot, within a reasonable time, unanimously agree as to whether the defendant is mentally retarded, as defined in G.S. 15A-2004, the judge shall impose a sentence of life imprisonment. In all cases in which the death penalty may be authorized, the judge shall include in his instructions to the jury that it must consider any aggravating circumstance or circumstances or mitigating circumstance or circumstances from the lists provided in subsections (e) and (f) which may be supported by the evidence, and shall furnish to the jury a written list of issues relating to such aggravating or mitigating circumstance or circumstances.

After hearing the evidence, argument of counsel, and instructions of the court, the jury shall deliberate and render a sentence recommendation to the court, based upon the following matters:

(1) Whether any sufficient aggravating circumstance or circumstances as enumerated in subsection (e) exist;

(2) Whether any sufficient mitigating circumstance or circumstances as enumerated in subsection (f), which outweigh the aggravating circumstance or circumstances found, exist; and

(3) Based on these considerations, whether the defendant should be sentenced to death or to imprisonment in the State's prison for life.

The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors. Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be individually polled to establish whether each juror concurs and agrees to the sentence recommendation returned.

If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment; provided, however, that the judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation."

SECTION 3. This act becomes effective December 1, 2001, and applies to trials begun on or after that date.

SENATE BILL 173:
No Death Penalty/Mentally Retarded

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Ballance
Date:	June 21, 2001	**Summary by:**	Susan L. Sitze
Version:	S173-CSSA-27[v.2]		Committee Counsel

SUMMARY: Senate Bill 173 provides that a mentally retarded person convicted of first degree murder shall not be sentenced to death.

CURRENT LAW: Current law does not provide an exemption from the death penalty for mentally retarded persons. G.S. 15A-2000(f)(2) and (6) provide two mitigating circumstances which may be potentially applied to mentally retarded persons in considering whether a particular defendant should receive the death penalty. The current mitigating circumstances that may apply are that: "the capital felony was committed while the defendant was under the influence of mental or emotional disturbance" and/or "the capacity of the defendant to appreciate the criminality of this conduct or to conform his conduct to the requirements of law was impaired".

BILL ANALYSIS: **Section 1** of Senate Bill 173 would prohibit a mentally retarded person from receiving the death penalty for first-degree murder.

The bill defines "**mentally retarded**" as significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, with the onset occurring before the age of 18. "**Significantly subaverage intellectual functioning**" is defined in the bill as an intelligence quotient (IQ) of 70 or below on an individually administered standardized IQ test. Under the provisions of the bill the defendant may make a motion prior to trial for a hearing to determine whether the defendant is mentally retarded. The court shall order a hearing with the consent of the State or upon a finding that the hearing is in the best interest of justice, and will promote judicial economy and administrative efficiency. The defendant has the burden of production and persuasion to demonstrate mental retardation by clear and convincing evidence. If the court determines the defendant is mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

If the court does not find the defendant to be mentally retarded at a pretrial hearing, upon introduction of evidence of the defendant's mental retardation, the court shall submit a special issue to the jury, after the guilt determination and before the sentencing hearing, as to whether the defendant is mentally retarded. If the jury determines the defendant to be mentally retarded, by a preponderance of the evidence, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

Section 2 makes a corresponding change to G.S. 15A-2000(b) to reflect the special jury instructions that might be required by subsection (e) of the new G.S. 15A-2004. This section also provides that if the jury cannot, within a reasonable time, unanimously agree as to whether the defendant is mentally retarded, the judge shall impose a sentence of life imprisonment.

The bill becomes effective December 1, 2001 and applies to trials begun on or after that date.

S173-SMSA-003

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. PCS

~~H. B. No.~~ _____ DATE 6/21/01

~~S. B. No.~~ SB 173 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
~~Sen.)~~

1 moves to amend the bill on page 1, line 13

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5

6 "quotient of 70 or below on an individually

7

8 administered scientifically recognized standardized)".

9

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. CSSA-27[V.2]

H. ~~B. No.~~ _____ DATE 6/21/01

S. B. No. 173 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Arnold
~~Sen.~~)

moves to amend the bill on page 1, line 19-21

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"court shall order such a hearing with the consent of the State. The defendant has the burden of production and".

SIGNED Jane Arnold

ADOPTED _____ FAILED _____ TABLED _____

6-21-01
Arnold #2
failed

House Judiciary I Committee

July 3, 2001
10:00 A.M.

Minutes

The House Judiciary I Committee met on Tuesday, July 3, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Boyd-McIntyre, Clary, Nesbitt, Redwine, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II). Representative Cunningham, Ex-officio member of the committee also attended.

Senator Hagan was recognized to explain Senate Bill 476, AN ACT TO PLACE ALL OF THE GREENSBORO 19 PRECINCT IN SUPERIOR COURT DISTRICT 18D, (Attachment III). A proposed House committee substitute was distributed, (Attachment IV).

Representative Blust moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried. The bill would realign the superior court districts in Guilford and Wake Counties to reflect changes made in each county's precinct boundaries since the districts were originally created in 1987.

Mr. Rick Zechini, Committee Counsel, was recognized to offer further explanation of the bill. A copy of the bill analysis is attached, (Attachment V).

Representative Blust moved a favorable report for the committee substitute.

Following committee discussion, the motion for a favorable report for the committee substitute carried, (Attachment VI).

Senate Bill 173, AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH. The bill was first explained during the May 1, 2001 meeting of the committee. It was before the committee again on June 21, 2001, at which time a proposed House committee substitute was adopted for discussion.

A new proposed House committee substitute was offered, (Attachment VII), and Representative Sutton moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the new committee substitute that incorporated the issues that were resolved at the time the bill was discussed on June 21, as well as a new issue that had been added. She reminded that committee that of the four issues that were discussed during the June 21 meeting, they had indicated a desire for a change in two of them. The first

change regarded the definition of significantly sub average intellectual functioning. She said that the "scientifically recognized" language recommended by the district attorneys was added on page 1, line 14 of the bill. The other change regarded at what point the jury would make the determination of mental retardation. She said that those changes had been made beginning on page 2, line 1 of the committee substitute in subsection (e) and (g). Ms. Sitze said that if the court, at a pretrial hearing, does not find the defendant mentally retarded, the defendant may introduce evidence of retardation at the sentencing hearing, and the court will submit a special issue to the jury for them to determine whether or not the defendant is mentally retarded. The special issue will be considered and answered by the jury before considering sentence, and before determining any aggravated or mitigating factors. If the jury finds the defendant mentally retarded, the process will stop there and the judge will rule that the defendant is not eligible for the death penalty and will sentence the defendant to life imprisonment. She said that the new language in subsection (g) clarifies that if the jury does not find the defendant mentally retarded, they may still consider the evidence towards that in determining the aggravated and mitigating factors and setting the defendants sentence when choosing between life imprisonment and the death penalty.

Ms. Sitze discussed the retroactivity provision that was added as new language to the bill and is found in Section 3. The language creates a postconviction procedure that would apply to those persons sitting on death row at the time the bill becomes effective and also to anyone who happens to be in the process of a first-degree murder trial at the time the bill becomes effective. She said that the opportunity to file a postconviction motion is not a "third bite at the apple" for people whose trials begin on or after the bill becomes effective, but is a chance for those who are already convicted, and on death row or those people who are caught mid-process when the bill becomes effective. This provision applies for one year and will expire on October 1, 2002.

Both Senator Ballance and Representative Sutton spoke in support of the proposed committee substitute.

Mr. Ken Honeycutt, District Attorney, 20th District, said that the district attorneys had not taken a position on the retroactive provision, but noted that it would drag out death penalty cases and would be a drain on resources.

Ms. Julia White, Office of the Attorney General, stated support for the provision.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, said that the trial lawyers did not oppose the provision.

Mr. Dick Adams, Victim's Assistance Network, asked if individuals who now reside on death row would have the right to request an IQ test and then file a motion. He also asked why a fiscal note had not been prepared to tell exactly how much the provision would cost.

Ms. Sitze said that any defendant currently on death row would have the opportunity to make this motion and have a hearing, but unless the onset occurred before the age of 18, one could not be determined to be mentally retarded under this bill.

She said that the reference to the cost savings is more an indication that if this section is not included, it is the opinion of the Attorney General that litigation from death row inmates saying they should be able to file a motion to be determined to be mentally retarded will occur and the state will have to litigate that on constitutional issues. It is thought that the state would loose such issues and then would have to go through the hearings anyway. Therefore, the "cost savings" is the fact that the state would not have to litigate the constitutional issue to start with. She said that the appellate process would be extended and will make it more expensive, but may save the state the expense of not having to argue the constitutional issues first.

Mr. Honeycutt said that he felt this should be litigated as a constitutional issue rather than a statutory issue.

Considerable discussion followed regarding the retroactivity provision.

Representative Sutton moved a favorable report for the House committee substitute.

Senator Ballance said that if the retroactivity provision was going to cause some members to vote against the bill, and if the Attorney General and the district attorneys cannot come to an agreement on the provision, he would prefer to have it removed in committee with the hope that it could be added as a floor amendment.

Representative Sutton spoke in favor of leaving the provision in the bill.

The motion for a favorable report for the committee substitute was before the committee. Upon vote of the committee, the motion carried, (Attachment VIII).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 3, 2001
10:00 A.M.

AGENDA

SENATE BILL 173 – NO DEATH PENALTY /MENTALLY RETARDED
SENATOR FRANK BALLANCE

SENATE BILL 476 – GREENSBORO 19 PRECINCT IN SUPERIOR COURT DIST. 18D
SENATOR KAY HAGAN

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 3, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cherie Poucher	Wake Co. Board of Elections
MARK SPEAS	D. ST ATTY 19A
Tom Lock	D.A. - 11th Dist.
Rob Johnson	DA - 15A Dist
Dolly Whiteside	AOC - Legal
Ken Honeycutt	DA 20th District
Travis Hill	Rep. Sutton's office
John McHugh	AOC office
David Hauss	ACLU
Cozs Bradford	ACLU
Jessica Sharpe	ACLU
HOANG LAM	ACLU
George Reed	NC Council of Churches
Stella Boswell	NCATL
Staples Hughes	Appellate Defender
Charles Cromer	NCATL
Julia White	DOJ
Scott Mayhan	AP
Jeanne Wiles	St. Francis Parish
Gretchen Vetter	St. Francis parish
Mel Chiotti	NC VAN
Donna Pizzatti	NCVAN

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 476
Judiciary II Committee Substitute Adopted 4/25/01

Short Title: Greensboro 19 Pct in Sup Ct Dist 18D. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PLACE ALL OF THE GREENSBORO 19 PRECINCT IN SUPERIOR COURT DISTRICT 18D.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-41(c) reads as rewritten:

"(c) In subsection (b) above:

(1) ~~the~~ The names and boundaries of townships are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census;

(2) ~~for~~ For Guilford County, precinct boundaries are as shown on maps in use by the Guilford County Board of Elections on April 15, ~~1987;~~ 1987, except that notwithstanding any other provision of law, Greensboro 19 Precinct, as legally defined and recognized in the 2000 U.S. Census, is wholly contained in Superior Court District 18D;

(3) ~~for~~ For Mecklenburg, Wake, and Durham Counties, precinct boundaries are as shown on the current maps in use by the appropriate county board of elections as of January 31, 1984, in accordance with G.S. 163-128(b);

(4) ~~for~~ For Wilson County, commissioner districts are those in use for election of members of the county board of commissioners as of January 1, 1987;

(5) ~~for~~ For Cumberland County, House District 17 is in accordance with the boundaries in effect on January 1, 1987. Precincts are in accordance with those as approved by the United States Department of Justice on February 28, 1986; ~~and~~

(6) ~~for~~ For Forsyth County, the boundaries of wards and precincts are those in effect on "WARD MAP 1985", published November 1985 by the City of Winston-Salem and Forsyth ~~County.~~ County, and

(7) The names and boundaries of precincts in Montgomery, Moore, and Randolph Counties are those in existence on March 15, 1999.

If any changes in precinct boundaries, wards, commissioner districts, or House of Representative districts have been made since the dates specified, or are made, those changes shall not change the boundaries of the superior court districts; provided that if any of those boundaries have changed, a precinct is divided by a superior court judicial district boundary, and the precinct was not so divided at the time of enactment of this section in 1987, the boundaries of the superior court judicial district are changed to place the entirety of the precinct in the superior court judicial district where the majority of the residents of the precinct reside, according to the 1990 Federal Census if:

(1) Such change does not result in placing a superior court judge in another superior court district;

(2) Such change does not make a district that has an effective racial minority electorate not have an effective racial minority electorate; and

(3) The change is approved by the county board of elections where the precinct is located, State Board of Elections and by the Secretary of State upon finding that the change:

a. Will improve election administration; and

b. Complies with subdivisions (1) and (2) of this subsection."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 476

Judiciary II Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S476-PCS8663-RA-4

Short Title: Realignment of Var. Sup. Ct. Judge Dists. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO REALIGN SUPERIOR COURT DISTRICTS IN GUILFORD AND WAKE COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-41(b) reads as rewritten:

"(b) For superior court districts of less than a whole county, or with part of one county with part of another, the composition of the district and the number of judges is as follows:

(1) Superior Court District 7B consists of County Commissioner Districts 1, 2 and 3 of Wilson County, Blocks 127 and 128 of Census Tract 6 of Wilson County, and Townships 12 and 14 of Edgecombe County. It has one judge.

(2) Superior Court District 7C consists of the remainder of Edgecombe and Wilson Counties not in Judicial District 7B. It has one judge.

(3) Superior Court District 10A consists of ~~Raleigh Precincts 12, 13, 14, 18, 19, 20, 22, 25, 26, 28, 34, 35, and 40, and St. Matthews #3, except that if the Wake County Board of Elections provides that the area in Raleigh Township which was incorrectly placed in a St. Mary's precinct shall be in Raleigh Precinct 40, that area shall be considered to be in Raleigh Precinct 40 for district purposes.~~ Wake County Precincts 01-12, 01-13, 01-14, 01-18, 01-19, 01-20, 01-22, 01-25, 01-26, 01-28, 01-34, 01-35, 01-40, 01-50, 17-03, and 17-07. It has ~~one judge.~~two judges.

(4) Superior Court District 10B consists of ~~Buckhorn Precinct, Cary Precincts 1, 2, 3, 4, 5, 6, and 7, Cedar Fork Precinct, Holly Springs Precinct, House Creek Precinct #1, Meredith Precinct, Middle Creek Township, Raleigh Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 21, 23, 24, 27, 29, 31, 32, 33, 36, and 41, Swift Creek Precinct #1 and #2 and~~

~~White Oak Township.~~ Wake County Precincts 01-01, 01-02, 01-03, 01-04, 01-05, 01-06, 01-07, 01-07A, 01-09, 01-10, 01-11, 01-16, 01-21, 01-23, 01-27, 01-29, 01-31, 01-32, 01-33, 01-36, 01-41, 01-48, 01-49, 03-00, 04-01, 04-02, 04-03, 04-04, 04-05, 04-06, 04-07, 04-08, 04-09, 04-10, 04-11, 04-12, 04-13, 04-14, 04-15, 04-16, 04-17, 04-18, 04-19, 04-20, 05-01, 05-02, 06-01, 06-02, 06-03, 07-01, 07-10, 11-01, 11-02, 12-01, 12-02, 12-03, 12-04, 12-05, 12-06, 18-01, 18-02, 18-03, 18-04, 18-05, 18-06, 18-07, 18-08, 20-01, 20-02, 20-03, 20-04, 20-05, 20-06, 20-07, 20-08, 20-09, and 20-10. It has two judges.

(5) Superior Court District 10C consists of ~~Barton's Creek Precinct, Leesville Precinct, House Creek Precinct #2, Little River Township, Marks Creek Township, New Light Township, Panther Branch Township, St. Mary's Precincts #1, #2, #3, #4, #5, and #6, and Wake Forest Township.~~ Wake County Precincts 02-01, 02-02, 02-03, 02-04, 02-05, 02-06, 07-02, 07-12, 08-01, 08-02, 08-03, 08-04, 08-05, 08-06, 08-07, 08-08, 09-01, 09-02, 09-03, 10-01, 10-02, 10-03, 10-04, 14-01, 14-02, 15-01, 15-02, 15-03, 15-04, 16-01, 16-02, 16-03, 16-04, 16-05, 16-06, 16-07, 19-01, 19-02, 19-03, 19-04, 19-05, 19-06, 19-07, and 19-08. It has one judge.

(6) Superior Court District 10D consists of ~~the remainder of Wake County not in Superior Court Districts 10A, 10B or 10C.~~ Wake County Precincts 01-15, 01-17, 01-30, 01-37, 01-38, 01-39, 01-42, 01-43, 01-44, 01-45, 01-46, 01-47, 01-51, 07-03, 07-04, 07-05, 07-06, 07-07, 07-07A, 07-09, 07-11, 13-01, 13-02, 13-03, 13-04, 13-05, 17-01, 17-02, 17-04, 17-05, 17-06, and 17-08. It has one judge.

(7) Superior Court District 12A consists of that part of Cross Creek Precinct #18 north of Raeford Road, Montclair Precinct, that part of Precinct 71-1 not in Judicial District 12B, Precinct 71-2, Morganton #2 Precinct, Cottonade Precinct, Cumberland Precincts 1 and 2, and Brentwood Precinct. It has one judge.

(8) Superior Court District 12B consists of all of State House of Representatives District 17, except for Westarea Precinct, and it also includes that part of Cross Creek Precinct #15 east of Village Drive. It has one judge.

(9) Superior Court District 12C consists of the remainder of Cumberland County not in Superior Court Districts 12A or 12B. It has two judges.

(10) Superior Court District 14A consists of Durham Precincts 9, 11, 12, 13, 14, 15, 18, 34, 40, 41, and 42, and that part of Durham Precinct 39 east of North Carolina Highway #751. It has one judge.

(11) Superior Court District 14B consists of the remainder of Durham County not in Superior Court District 14A. It has three judges.

(12) Superior Court District 18A consists of ~~Greensboro Precincts 5, 6, 7, 8, 9, 19, 25, 29, 30, 44, and 45 and Clay and Fentress Precincts.~~ Fentress Precincts 1 and 2; Greensboro Precincts 4, 5, 6, 46, 52, 67, 68, 69, 70, 71, 72, 73, 74, and 75; North Clay Precinct; Pleasant Garden Precincts 1 and 2; and South Clay Precinct. It has one judge.

(13) Superior Court District 18B consists of High Point Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, ~~20, and 21, Deep River Precinct, and Jamestown Precincts 1 and 3.~~ 19, 20, 21, 22, 23, 24, 25, 26, and 27; HP Precinct; Jamestown Precincts 1 and 5; North Deep River Precinct; and South Deep River Precinct. It has one judge.

(14) Superior Court District 18C consists of ~~Greensboro Precincts 20, 27, 31, 32, 34, 37, 38, 39, and 43, High Point Precinct 19, Stokesdale, Oak Ridge, Bruce, Friendship I, Friendship II, Jamestown II, South Center Grove, North Center Grove, and North Monroe Precincts.~~ Center Grove Precincts 1, 2, and 3; Friendship Precincts 1, 2, 3, 4, and 5; Greensboro Precincts 17, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40A, 40B, 41, 42, 43, 64, 65, and 66; Jamestown Precincts 2, 3, and 4; Monroe Precinct 3; North Center Grove Precinct; Oak Ridge Precincts 1 and 2; Summerfield Precincts 1, 2, 3, and 4; and Stokesdale Precinct. It has one judge.

(15) Superior Court District 18D consists of Greensboro Precincts ~~4, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 36, and 42, and North and South Sumner Precincts.~~ 1, 11, 12, 13, 14, 15, 16, 19, 35, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 63; and Sumner Precincts 1, 2, 3, and 4. It has one judge.

(16) Superior Court District 18E consists of ~~the remainder of Guilford County not in Superior Court Districts 18A, 18B, 18C, or 18D.~~ Gibsonville Precinct; Greene Precinct; Greensboro Precincts 2, 3, 7, 8, 9, 10, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29; Jefferson Precincts 1, 2, 3, and 4; Monroe Precincts 1 and 2; North Madison Precinct; North Washington Precinct; Rock Creek Precincts 1 and 2; South Madison Precinct; and South Washington Precinct. It has one judge.

(17) Superior Court District 21A consists of the Southwest Ward of Winston-Salem, and Precincts 80-6, 80-7, 80-8, 3-1, 9-1, 13-1, 13-2, 13-3, 7-1, 7-2, 7-3, 5-1, 5-2, 5-3, 12-2, and 12-3. It has one judge.

(18) Superior Court District 21B consists of the Northwest Ward, the South Ward, and the Southeast Ward of Winston-Salem, and Precincts 4-1 and 4-2. It has one judge.

(19) Superior Court District 21C consists of Precincts 80-1, 80-2, 80-3, 80-4, 80-5, 80-9, 10-2, 10-3, 3-2, 3-3, 11-1, 11-2, 2-1, 6-1, 6-2, 6-3, 6-4, 1-1, 1-2, and 1-3. It has one judge.

(20) Superior Court District 21D consists of the North Ward, the Northeast Ward, and the East Ward of Winston-Salem, and Precincts 8-2 and 8-3. It has one judge.

(21) Superior Court District 26A consists of Charlotte Precincts 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 31, 33, 39, 41, 42, 46, 52, 54, 55, 56, 58, 60, 77, 78, and 82, and Long Creek Precinct #2 of Mecklenburg County. It has two judges.

(22) Superior Court District 26B consists of Charlotte Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 20, 21, 28, 29, 30, 32, 34, 35, 36, 37, 38, 43, 44, 45, 47, 51, 61, 62, 63, 65, 66, 67, 68, 69, 71, 74, 83, 84, and 86, Crab Orchard Precincts 1 and 2, and Mallard Creek Precinct 1. It has two judges.

(23) Superior Court District 26C consists of the remainder of Mecklenburg County not in Superior Court Districts 26A or 26B. It has two judges.

(24) Superior Court District 19B1 consists of all of Montgomery County except for Star Precinct, the following precincts of Moore County: #8 West End, #9 Eastwood, #11 Vass, #12 Little River, #14 Taylortown, #17 South Southern Pines, #19 North Southern Pines; #20 West Aberdeen, #21 East Aberdeen, #22 Pinedene, #23 Pinebluff, and the remainder of Randolph County not in Superior Court District 19B2. It has one judge.

(25) Superior Court District 19B2 consists of Star Precinct in Montgomery County, the remainder of Moore County not in Superior Court District 19B1, and the following precincts of Randolph County: Archdale I, Archdale II, Archdale III, Brower, Coleridge, Franklinville, Grant, Level Cross, Liberty, New Market North, New Market South, Pleasant Grove, Prospect, Providence, Ramseur, Richland, Staley, Trinity East, and Trinity West. It has one judge."

SECTION 2. G.S. 7A-41(c) reads as rewritten:

"(c) In subsection (b) above:

(1) ~~the~~ The names and boundaries of townships are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 U.S. Census;

(2) ~~for Guilford County, precinct boundaries are as shown on maps in use by the Guilford County Board of Elections on April 15, 1987;~~ For Guilford County, the precincts are as they were legally defined and recognized as voting districts of the same name in the 2000 U.S. Census, except Greensboro Precincts 40A and 40B are as they were modified by the Guilford County Board of Elections and are as shown on the Legislative Services Office's redistricting computer database on May 1, 2001;

(2a) For Wake County, the precincts are as they were adopted by the Wake County Board of Elections and in effect as of January 1, 2001.

(3) ~~for Mecklenburg, Wake,~~ For Mecklenburg and Durham Counties, precinct boundaries are as shown on the current maps in use by the appropriate county board of elections as of January 31, 1984, in accordance with G.S. 163-128(b);

(4) ~~for~~ For Wilson County, commissioner districts are those in use for election of members of the county board of commissioners as of January 1, 1987;

(5) ~~for~~ For Cumberland County, House District 17 is in accordance with the boundaries in effect on January 1, 1987. Precincts are in accordance with those as approved by the United States Department of Justice on February 28, 1986; ~~and~~

(6) ~~for~~ For Forsyth County, the boundaries of wards and precincts are those in effect on "WARD MAP 1985", published November 1985 by the City of Winston-Salem and Forsyth ~~County.~~ County; and

(7) The names and boundaries of precincts in Montgomery, Moore, and Randolph Counties are those in existence on March 15, 1999.

If any changes in precinct boundaries, wards, commissioner districts, or House of Representative districts have been made since the dates specified, or are made, those changes shall not change the boundaries of the superior court districts; provided that if any of those boundaries have changed, a precinct is divided by a superior court judicial district boundary, and the precinct was not so divided at the time of enactment of this section in 1987, the boundaries of the superior court judicial district are changed to place the entirety of the precinct in the superior court judicial district where the majority of the residents of the precinct reside, according to the 1990 Federal Census if:

(1) Such change does not result in placing a superior court judge in another superior court district;

(2) Such change does not make a district that has an effective racial minority electorate not have an effective racial minority electorate; and

(3) The change is approved by the county board of elections where the precinct is located, State Board of Elections and by the Secretary of State upon finding that the change:

a. Will improve election administration; and

b. Complies with subdivisions (1) and (2) of this subsection."

SECTION 3. As to a district in a county not subject to section 5 of the Voting Rights Act of 1965, as amended, this act is effective when it becomes law. As to a district in a county subject to section 5 of the Voting Rights Act of 1965, as amended, this act becomes effective when the district is precleared pursuant to section 5 of the Voting Rights Act of 1965, as amended.

SENATE BILL 476:
Realignment of Various Superior Court Districts

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Kay Hagan
Date:	July 3, 2001	**Summary by:**	Terrence D. Sullivan, Director of Research, and Rick Zechini, Committee Counsel
Version:	S476-PCS8663-RA-4		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 476 would realign the superior court districts in Guilford and Wake Counties based on current precincts.***

CURRENT LAW: The General Assembly is charged by the Constitution with dividing the State into superior court judicial districts. Each regular resident superior court judge is elected from the district in which he or she is a resident (NC Const. Art. IV, § 9 (1) and §16). G.S. 7A-41 sets forth the boundaries of the State's superior court districts and apportions the 91 regular resident superior court judgeships among them. As of January 1, 2001, there are 63 of these districts. On January 1, 2003, there will be 65 superior court districts when the present Superior Court District 5 (consisting of New Hanover and Pender Counties) is split into the individual districts 5A, 5B, and 5C.

BILL ANALYSIS: Section 1 of the bill would realign the superior court districts in Guilford and Wake Counties to, among other matters, reflect changes made in each county's precinct boundaries since the districts involved were originally created in 1987. Section 1 also makes a technical correction to G.S. 7A-41(b) to make clear that Superior Court District 10A has two judges, as is already provided in G.S. 7A-41(a). Section 2 amends G.S. 7A-41(c), which references the precincts for Guilford and Wake Counties. Section 3 is the effective date clause and provides that the changes made to the Wake County Superior Court Districts are effective when the bill becomes law and the changes made to the Guilford County Superior Court Districts are effective upon preclearance by the United States Department of Justice.

BACKGROUND: **NORTH CAROLINA CONSTITUTION**

ARTICLE IV JUDICIAL

Sec. 9. Superior Courts.

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

. . . .

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 476 A BILL TO BE ENTITLED AN ACT TO PLACE ALL OF THE GREENSBORO 19 PRECINCT IN SUPERIOR COURT DISTRICT 18D.

☐ 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

ATTACHMENT VII

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S D

SENATE BILL 173*
Corrected Copy 2/20/01
Judiciary II Committee Substitute Adopted 4/19/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S173-CSSA-33 [v.2]

7/2/2001 5:39:32 PM

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. – Significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, with the onset occurring before the age of 18.

(2) Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pre-trial hearing to determine if the defendant is mentally retarded. The court shall order such a hearing with the consent of the State or upon a finding that such a pre-trial hearing is in the best interest of justice, and will promote judicial economy and administrative efficiency. The defendant has the burden of production and persuasion to demonstrate mental retardation by clear and convincing evidence. If the court determines the defendant to be mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find the defendant to be mentally retarded in the pretrial proceeding, upon the introduction of evidence of the defendant's mental retardation during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant is mentally retarded as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines the defendant to be mentally retarded, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate mental retardation to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant is not mentally retarded as defined by this section, the jury may consider any evidence of mental retardation presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

SECTION 2. G.S. 15A-2000(b) reads as rewritten:

"(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge to be warranted by the evidence shall be given by the court in its charge to the jury prior to its deliberation in determining sentence. The court shall give appropriate instructions in those cases in which evidence of the defendant's mental retardation requires the consideration by the jury of the provisions of G.S. 15A-2004. If the jury cannot, within a reasonable time, unanimously agree as to whether the defendant is mentally retarded, as defined in G.S. 15A-2004, the judge shall impose a sentence of life imprisonment. In all cases in which the death penalty may be authorized, the judge shall include in his instructions to the jury that it must consider any aggravating circumstance or circumstances or mitigating circumstance or circumstances from the lists provided in subsections (e) and (f) which may be supported by the evidence, and shall furnish to the jury a written list of issues relating to such aggravating or mitigating circumstance or circumstances.

After hearing the evidence, argument of counsel, and instructions of the court, the jury shall deliberate and render a sentence recommendation to the court, based upon the following matters:

(1) Whether any sufficient aggravating circumstance or circumstances as enumerated in subsection (e) exist;

(2) Whether any sufficient mitigating circumstance or circumstances as enumerated in subsection (f), which outweigh the aggravating circumstance or circumstances found, exist; and

(3) Based on these considerations, whether the defendant should be sentenced to death or to imprisonment in the State's prison for life.

The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors. Upon delivery of the sentence recommendation by the foreman of the jury, the

jury shall be individually polled to establish whether each juror concurs and agrees to the sentence recommendation returned.

If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment; provided, however, that the judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation."

SECTION 3. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§15A-2005. Request for postconviction determination of mental retardation.**

(a) A defendant sentenced to death may make a motion before the trial court that entered the judgment of conviction against the defendant for a determination of the defendant's mental retardation.

(b) Upon such motion, the court shall conduct a hearing to determine if the defendant is mentally retarded as defined by G.S. 15A-2004(a).

(c) The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence.

(d) The court shall appoint counsel for the defendant who brings a motion under this section if that defendant is indigent.

(e) If the court determines the defendant to be mentally retarded, the court shall declare the defendant ineligible for the death penalty, and must convert the defendant's sentence to life imprisonment."

SECTION 4. Sections 1 and 2 of this act become effective October 1, 2001, and apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective October 1, 2001 and applies to trials in progress on that date, including trials in which jury selection has begun, and applies to defendants convicted and sentenced to death on or before that date. Section 3 of this act expires on October 1, 2002. Section 4 of 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 173 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

☐ 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 (# 2), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill # 1), (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 Judiciary I Committee

July 10, 2001

Minutes

The House Judiciary I Committee met on Tuesday, July 10, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Clary, Nesbitt, Sutton and Walker. Representative Dedmon, Ex-officio member of the committee also attended. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Hoyle was recognized to explain Senate Bill 470, AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW, (Attachment III). A propose House Committee Substitute recommended by the subcommittee that was assigned to study the bill, was distributed, (Attachment IV). Representative Sutton moved that the committee substitute be adopted for the purpose of discussion. The motion carried.

Senator Hoyle stated that over the past fifty years, every state except Alaska has enacted some type of motor vehicle franchise law and that the law enacted by North Carolina has served consumers well. He further stated that he felt the manufacturers had been served well by the state's franchise laws. He said that to insure that the franchise laws continue to work well they sometimes needs to be revised to insure that a level playing field exists in order that the large manufacturers do not have an unfair advantage over the hometown dealers.

Representative Sutton, chair of the subcommittee, was recognized to submit a subcommittee report, identify the issues of contention and explain how they were resolved. Representative Sutton briefly described the work of the subcommittee saying that all parties involved were in agreement with some sections of the bill. He said that Sections 2, 2.1, 5 and 6 were in controversy, as well as the effective date.

Mr. Rick Zechini, Committee Counsel, was recognized for further explanation. He discussed the changes made by the proposed committee substitute and those changes are outlined in the bill analysis, prepared by Mr. Zechini, (Attachment V). A fiscal note was also distributed, (Attachment VI).

Representative Blust asked if any other associations currently have "standing."

Mr. Zechini said that it was his understanding that there is no statutory provision in the law that provides "standing" to an association. Representative Sutton agreed saying that there is no provision in North Carolina law that allows "standing" to an organization or association, and said that this would be new law. Mr. Zechini added that, in general terms, an association may have standing where it can show that all its individual members would have standing, that the formation of the association relates to the issues that are being adjudicated, and the litigation does not necessitate the individual members' actually being parties to the litigation.

Representative Sutton noted that under the provisions in the bill, the matter of controversy would have to affect all the dealers, not just a portion of the dealers before they would have "standing" to move forward, and that mediation would be required.

Representative Nesbitt asked for clarification of the controversy in Section 2 of the bill.

Representative Sutton said that the argument is centered on what the dealers perceive as an unfair pricing situation where one dealer may pay less for a vehicle than another, or one dealer may have to pay more than another dealer. He said that this is done under Ford's Blue Oval program. He noted that other programs are in effect, but that he understands there are no allegations that pricing is a factor in those programs. Representative Sutton said that under the Blue Oval program, if a dealer meets the requirements set forth by Ford, the dealer, at some point in the future, receives a rebate of 1 ¼% of the price of the vehicle. He said that some dealers are saying that those dealers who do not elect to be a member of the Blue Oval program have to pay a set price for the vehicle, and receivesno rebate.

Senator Hoyle said that this system especially affects the small family-owned businesses in small communities who do not have the resources to spend large amounts to enhance the appearance of the business. He said that this multi-tiered pricing would hurt the small community dealers the most, and questioned the fairness of giving one dealer, who has spent money for some program that the manufacturer wants the dealer to do, a better price than another dealer who has chosen not to do so.

Representative Nesbitt stated that the bill appears to outlaw any incentive program. Representative Sutton replied that both sides of this issue agree that incentive programs can exist under the bill. Considerable discussion regarding incentives and rebates followed.

Chairman Hackney stated that there were amendments pending, and that they would be offered and discussed at a future meeting.

The meeting adjourned at 10:50 a.m.

Joe Hackney

Representative Joe Hackney
Chairman

Emily Reynolds Freeman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 10, 2001
10:00 A.M.

AGENDA

SENATE BILL 470 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
SENATOR DAVID HOYLE

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 10, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Harrah	NCADA
H.H. Webb	" "
[illegible] Benson	Capitol Group
Taylor Ward	Southeast Toyota Distributors, LLC
Jim Nance	NCADA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 470
Commerce Committee Substitute Adopted 4/25/01

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, to charge or assess one of its franchised dealers located in this State, or to charge or debit the account of such a dealer for goods, materials, or services, other than the published cost of new motor vehicles, and merchandise, tools, and equipment specifically ordered by the dealer, unless the dealer receives a detailed itemized description of the nature and amount of each such charge in writing at least 10 days prior to the date such charge or account debit is to become effective or due. For purposes of this subsection, the charges or debits for which prior written notice is required include, but are not limited to: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; warranty reimbursement; sales incentives; parts; tools; signage; equipment; dealership operation guides and other materials; manufacturer catalog or program materials; internet programs or materials, and any additional charges or surcharges made or proposed for goods, materials, or services previously charged to the dealer.

(b) Upon receipt of a notice given pursuant to or in satisfaction of subsection (a) of this section, in the event of a payment, reimbursement, or credit that is insufficient or inadequate under this Article or under the franchise, or in the event a new motor vehicle dealer discovers an actual or proposed charge or debit for which a manufacturer should have provided prior written notice under subsection (a) of this section, the dealer, if he believes the charge, payment, reimbursement, or credit to be unreasonable, or contrary

to the provisions of this Article or the franchise, may challenge the charge, credit, or payment either by filing a petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent jurisdiction under G.S. 20-308.1. If the amount in controversy is less than or equal to ten thousand dollars ($10,000), the dealer may, in his discretion, prior to filing a petition before the Commissioner or civil action, use the informal dispute resolution procedure provided in subsection (c) of this section.

(c) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed debit or charge to the dealer or to the dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article, contrary to the terms of the franchise, or unreasonable, or a payment, reimbursement, or credit which is insufficient or inadequate under this Article or under the franchise, the inadequacy or insufficiency of which is in an amount less than or equal to ten thousand dollars ($10,000), may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the dealer seeks to challenge and the reason or basis for such challenge. The charges, payments, reimbursements, or credits challenged by the dealer need not be related, it being the intention of this subsection that multiple issues may be resolved in a single proceeding. The motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Unless the dealer specifically states in the letter that the dealer will be represented in the mediation by legal counsel, the matter shall be mediated by the mediator without the appearance of legal counsel by either the dealer or manufacturer. Upon the mailing of a letter to the Commissioner and the manufacturer under this subsection, any chargeback to or any payment required of a dealer by a manufacturer shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer under this subsection, any statute of limitation or other

time limitation for filing a petition before the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this section shall be held in North Carolina.

(5) In this subsection, "mediation" means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch, shall, by certified or registered mail, return receipt requested, send the mediator and the motor vehicle dealer a detailed response to the allegations raised in the dealer's written request.

(7) A mediation proceeding under this section shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable for the compensation paid or to be paid a mediator employed pursuant to this subdivision.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction including, but not limited to, the

payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of such a petition or civil action, the affected manufacturer, manufacturer branch, distributor, or distributor branch shall not require payment from the dealer or debit or charge the dealer's account unless and until a final judgment supporting such payment or charge has been rendered by the Commissioner or court. All conducted communications made during a mediation proceeding, including but not limited to those communications made during a mediated settlement conference, are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not a dealer is dualed with one or more other line makes of vehicles, a dealer's sales penetration or, except as provided in this subdivision, a dealer's sales volume, a dealer's level of sales or service customer satisfaction, a dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or a dealer's participation in used vehicle inspection or certification, programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis; and
   2. Be uniformly available, applied and administered to all of the manufacturer's franchised dealers in this State; and
   3. Provide that any of the manufacturer's franchised dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volume(s) for receiving the rebate(s) or incentive(s) and the specific calculation(s) for determining the required sales volume(s) of the inquiring dealer and any of the manufacturer's other franchised dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the

manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, manufacturer branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2(b) reads as rewritten:

"(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes,~~ trailers or semitrailers."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturer or captive finance company to unfairly discriminate among dealers.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Offer or distribute goods or services to one or more of its franchised dealers located in this State at a lower price or on a more favorable basis than is available to any of its other franchised dealers located in this State.

(2) Treat its franchised dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer are sold or serviced with one or more other line-makes of vehicles on a less favorable basis than it treats its dealers who exclusively sell vehicles distributed by that manufacturer.

(3) Otherwise treat one or more of its franchised dealers located in this State on a more favorable basis than it treats any of its other franchised dealers located in this State.

(b) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any leasing company, finance company, or other lender that is owned, operated, or controlled by a manufacturer, factory branch, distributor, or distributor branch, to do any of the following:

(1) Fail or refuse to permit any of the dealers franchised by that manufacturer, factory branch, distributor, or distributor branch in this State with whom that leasing company, finance company or other lender engages in business the opportunity to participate in any program or policy that offers the customers of participating dealers

more favorable rates or terms than those available to the customers of that manufacturer's other franchised dealers located in this State.

(2) Unfairly discriminate among its franchised motor vehicle dealers located in this State with respect to the availability of credit, the terms of credit, availability of a lease, or terms of a lease available to a dealer's customers. For purposes of this subdivision, evidence that a customer was denied credit or the extension of a lease from a lender covered by this section when the application was made through one dealer, but, within a 30-day period, the same customer was granted credit or the extension of a lease when the application was made through another dealer, shall constitute a prima facie case of unlawful discrimination in violation of this subdivision."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for ~~violations.~~violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, intentional, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 motor vehicle dealerships, or a minimum of 10 motorcycle dealerships, substantially all of whom are new motor vehicle dealerships located within North Carolina, and which represents the collective interests of such members, shall have standing to file a petition before the Commissioner or a cause of action in the General Court of Justice of North

Carolina for itself, or on behalf of any or all of its members. Such action may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State has violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of such an association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection, in no event shall the Commissioner or court enter an award of monetary damages in favor of the association."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, to assign or change a new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the dealer's area of responsibility is included in the relevant market area under the

protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or dealer:

a. Upon unduly onerous or unreasonable terms or conditions;

b. When the cost of the signage or its installation or maintenance would be unreasonable in light of the dealer's reasonably anticipated sales volume of new motor vehicles manufactured or distributed by that manufacturer or current market or economic conditions;

c. If the manufacturer's signage requirements are inconsistent with the signage requirements of one or more other manufacturers whose line-makes of new motor vehicles are sold at the same facility;

d. If installation of the additional signage would require removal or relocation of any of the dealer's existing signs displaying the dealership's name or the name of other line makes of new motor vehicles sold at the same facility; or

e. If installation of the additional signage would violate local signage or zoning laws to which the dealer is subject.

Any provision of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2 of this act becomes effective December 31, 2001. All other sections of this act are effective when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 470

Commerce Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-PCS9309-SG-29

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent

jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before

the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, 'mediation' means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable

for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to

remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."

SECTION 2.1. G.S. 20-305(30), as amended by Section 2 of this act, reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the

price charged to its franchised dealers located in this state in a manner which would violate this subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2(b) reads as rewritten:

"(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes,~~ trailers or semitrailers."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.**

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State has violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this

subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or dealer:

a. Upon unreasonable and unduly onerous terms or conditions;

b. When the cost of the signage or its installation or maintenance would be unreasonable in light of the franchised new motor vehicle dealer's reasonably anticipated sales volume of new

motor vehicles manufactured or distributed by the manufacturer or current market or economic conditions;

c. If the manufacturer's signage requirements are inconsistent with the signage requirements of one or more other manufacturers whose line makes of new motor vehicles are sold at the same facility;

d. If installation of the additional signage would require removal or relocation of any of the franchised new motor vehicle dealer's existing signs displaying the dealership's name or the name of other line makes of new motor vehicles sold at the same facility; or

e. If installation of the additional signage would violate local signage or zoning laws to which the franchised new motor vehicle dealer is subject.

Any term, provision or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2.1 of this act becomes effective March 1, 2003. All other sections of this act are effective when they become law.

SENATE BILL 470:
Clarify MV Dealer Franchise Laws.

BILL ANALYSIS

Committee:	House Judiciary I Committee	**Introduced by:**	Senator Hoyle
Date:	July 10, 2001	**Summary by:**	Rick Zechini
Version:	S470-PCS~~3489~~-SG-29 9309-SC-29		House Judiciary I Committee Counsel

SUMMARY: ***The House Proposed Committee Substitute requires automobile manufacturers to provide written notice to a dealer of charges or debits for certain items, provides for mediation if the amount of disputed charges is $10,000 or less, restricts rebate and incentive programs offered by manufacturers, prohibits recreational vehicle manufacturers from owning dealerships, prohibits manufacturers or captive finance or leasing companies from discriminating against dealers, provides that punitive damages, attorneys' fees, and costs may be awarded if a violation of the motor vehicle dealers and manufacturers licensing laws is willful, provides for association standing, limits the ability of manufacturers to change a dealer's area of responsibility, and prohibits manufacturers from coercing dealers into purchasing or leasing signs displaying the name of the manufacturer or dealer under certain circumstances.***

BILL ANALYSIS:

Section 1. Notice Required when Manufacturer Charges Dealer for Merchandise, Tools, or Equipment, other than Charges for a New Vehicle; Mediation. Section 1 of the bill requires a manufacturer to provide written notice to a dealer at least 10 days prior to debiting the dealer's account or a charge becomes due that is not a charge or debit for a new vehicle or merchandise, tools, or equipment specifically ordered by the dealer. If the amount due is in dispute, the dealer may file a petition with the Commissioner of the Division of Motor Vehicles (Commissioner) or file a civil action in court. If the amount in controversy is less than or equal to $10,000 then the dealer may use informal dispute resolution (non-binding mediation). This Section provides the procedures for the mediation.

The Proposed House Committee Substitute (PCS) expressly provides a list of the items for which prior written notice is required. It also provides that the dealer has 75 days from the receipt of the written notice of the charge or debit to request mediation. In addition, if the dealer requests an explanation of the charges or debits from the manufacturer, the dealer has 30 days from the receipt of the manufacturer's written response to request mediation. The PCS provides that either party may be represented by legal counsel at the mediation if at least 10 days prior to the mediation either party provides notice to the other of their intention to have legal counsel.

Section 2. Unlawful for Dealers to Vary Motor Vehicle Prices.

The Proposed House Committee Substitute amends G.S. 20-305(30), effective when the bill becomes law, to provide that if as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the price charged to its dealers in a manner which would violate the subdivision, it is lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of the act, to continue in effect as to the manufacturer's dealers until December 31, 2004.

Section 2.1. Unlawful for Dealers to Vary Motor Vehicle Prices; Must Uniformly Apply Rebate/Incentive Programs.

Section 2.1 of the bill further amends G.S. 20-305(30) by expanding the current provision making it unlawful for a manufacturer to vary the price of vehicles sold to its franchised dealers. This Section also requires a manufacturer that offers consumer rebates and incentives to offer the rebates and incentives to all of its franchised dealers in the State and uniformly apply the rebates and incentives to all eligible consumers. A manufacturer that offers dealer rebates and incentive programs must offer the programs to all its franchised dealers in the State, must base the programs on the dealer's sales, and provide dealers, when requested, with the method used by the manufacturer in determining the dealer's sales. Programs that are prohibited by law may not be included in the price of a vehicle charged by a manufacturer to the dealer. Under this bill, fleet accounts are exempt from the provisions of Section 2.1.

The only change that the Proposed House Committee Substitute makes to this Section is changing the effective date of this Section from December 31, 2001, to March 1, 2003.

Section 3. Recreational Vehicle (RV) Manufacturers Prohibited from Owning Dealerships. Section 3 removes the exemption for motor home manufacturers from G.S. 20-305.2(b). This change will mean that RV manufacturers, subject to certain exceptions, will be prohibited from owning dealerships in North Carolina.

The Proposed House Committee Substitute does not change this Section.

Section 4. Motor Vehicle Manufacturers/Lenders Must Not Discriminate Among Dealers. Section 4 of the bill prohibits manufacturers and captive finance or leasing companies from discriminating against dealers based on certain factors.

The Proposed House Committee Substitute changes this Section to globally prohibit discrimination based on certain factors. The Second Edition of the bill prohibits specific types of behavior by manufacturers or lenders owned by manufacturers.

Section 5. Punitive Damages, Attorneys' Fees and Costs/Association Standing. G.S. 20-308.1 allows a court to award punitive damages, attorneys' fees, and court costs if it finds that a violation of the motor vehicle dealers and manufacturers licensing laws is malicious or wanton, or if it finds that there have been continued multiple violations of the laws. Section 5 amends G.S. 20-308.1 to allow for the recovery of punitive damages, attorneys' fees, and court costs when the violation is **"willful"**, malicious, or wanton. Section 5 also provides that any association that is comprised of a minimum of 400 dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, has standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. An association entitled to standing pursuant to this Section must initiate mediation prior to filing a petition before the Commissioner or a cause of action in court.

The Proposed House Committee Substitute does not provide for punitive damages where violations are **intentional**, as the Second Edition of the bill did. The PCS also explicitly states that an association meeting the standing requirements set out above may only seek declaratory and injunctive relief and not monetary damages.

Section 6. Manufacturer's Change of a Dealer's Area of Responsibility/Sign Agreements. Section 6 of the bill prohibits manufacturers from changing a dealer's area of responsibility without due regard to the present or projected future patterns of sales. Dealers can contest changes to their area of responsibility at a hearing before the Commissioner where the manufacturer has the burden of proving that the changes are reasonable in light of present or projected future pattern of sales. Section 6 of the bill also prohibits manufacturers from coercing dealers into purchasing or leasing signs displaying the name of the manufacturer or dealer under certain circumstances.

The Proposed House Committee Substitute makes only a technical change to this Section.

Section 7. Severability Clause. Section 7 of the bill provides a severability clause that allows all portions of the bill not determined to be unconstitutional to remain in effect.

The Proposed House Committee Substitute does not change this Section.

Section 8. Effective Date. Section 2.1 of the act becomes effective March 1, 2003, and all other Sections of the act are effective when they become law.

The Proposed House Committee Substitute provides that the effective date of the new Section 2.1 is March 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE
REVISED DRAFT

BILL NUMBER: Senate Bill 470 S470-PCS3489-SG-24

SHORT TITLE: **Clarify Motor Dealer Franchise Laws**

SPONSOR(S): Senator Hoyle

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: Division of Motor Vehicles

EFFECTIVE DATE: Section 2.1 effective March 1, 2003; other sections when the bill becomes law

BILL SUMMARY: Under section one, new G.S. 20-301.1 provides that if a dealer is charged in violation of this Section or in violation of the franchise agreement in the amount of less than or equal to $10,000, the dealer may pursue mediation. If mediation fails, a dealer may file a petition with the Commissioner or a civil action and the charge or debit shall not take affect until a final judgment has been rendered.
Under section five, amended G.S. 20-308.1 provides that any association that has 400 new motor vehicle dealers, or ten motorcycle dealers, has standing to file a petition before the Commissioner or cause of action in court for itself or on behalf of any or all of its members, seeking declaratory and injunctive relief.

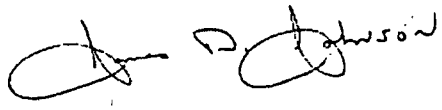
ASSUMPTIONS AND METHODOLOGY: The Division of Motor Vehicles maintains that the bill would not have a significant fiscal impact on the Division and that any additional responsibilities could be handled from existing resources. Section 1 (b) (3) requires that the Commissioner appoint a mediator and send notice of that appointment to both parties. The Division already sends such notice and would pick a mediator from a list kept by the clerks of superior court. The parties choose a venue, schedule the mediation,

and are responsible for the compensation and expense of the mediator. DMV concludes that the bill would only require two more letters in each case, of which there have been few. Under Section 1, new Section 20-301.1(b)(9), if mediation fails and a petition is filed the final judgment would have to be rendered by the Commissioner or court. It is not known how many cases of this type would be filed with the Commissioner or courts, but DMV does not believe that the number would be large enough to cause significant additional expense. Under Section 6, new 20-305 (38) provides that, under certain conditions regarding the assignment or change of franchise areas, a franchised dealer may file a petition with the Commissioner and that the affected manufacturer or other party would have the burden of proof. While expert testimony would be required in these cases, DMV maintains that neither the possible complexity of these cases nor a plausible estimate of their expected number, would require additional resources.
Given the information above, Fiscal Research also concludes that any actions that are brought to the court can be absorbed with existing resources.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Bob Weiss and Lisa Robinson

APPROVED BY: James D. Johnson



DATE: July 9, 2001

House Judiciary I Committee

July 17, 2001

Minutes

The House Judiciary I Committee met on Tuesday, July 17, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Blust, Boyd-McIntyre, Clary, Gray, Insko, Nesbitt, Redwine, Sutton, Thompson and Walker. Representative Dedmon, Ex-officio member of the committee, was also present. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Under consideration by the committee was Senate Bill 470, AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW. The bill was explained and discussed during the July 10, 2001 meeting of the committee. At that meeting a proposed House Committee Substitute, (Attachment III), was adopted for the purpose of discussion.

Chairman Hackney recognized Mr. Rick Zechini, Committee Counsel, for continued explanation of the language in section 2.1 of the bill regarding manufacturer to dealer rebates. Mr.Zechini said that it was his understanding that the intent is that rebates or incentive programs be based on historical sales volume of the specific dealer or the reasonably anticipated sales volume, or on a uniform per vehicle sold or leased basis, which means for every car sold the dealer would receive a certain amount of money as a rebate.

Chairman Hackney said that the language on lines 16-18 on page 6 of the bill should be rewritten to set forth exactly what is or is not allowed with respect to incentive.

Mr. Zechini stated that he had discussed this with some of the interested parties and had suggested that the word "historical" be added after the word "actual" on line 16 of page 6 to clarify that rebates would be based on future sales volume, not those in the past.

Representative Nesbitt questioned the possibility of putting the small dealer out of business.

Senator Hoyle stressed that the intent of the bill is to address the two-tiered pricing system in order that the manufacturer will not be allowed to discriminate against the small dealer.

Mr. Don Price, Lafayette Ford, Fayetteville, North Carolina, was recognized to speak on behalf of Ford dealers. He spoke in support of the Blue Oval Certified program. He requested that Section 2 be removed from the bill to give the Blue Oval program time to prove its worth. He further stated the hope that the Blue Oval program, and all other existing customer satisfaction programs be grandfathered if the committee chose to keep Section 2 in the bill.

Ms. Sherry Wolard, Hastings Ford, Greenville, spoke in support of the Blue Oval program and the removal of Section 2 from the bill. She said that if Section 2 is not removed from the bill, then the members should consider grandfathering the Blue Oval program.

Mr. Robert Glaser, President, North Carolina Automobile Dealers Association, (NCADA) was recognized and spoke in support of the bill. He said that 21% of all retail sales in North Carolina begin with the car dealers. He said that multi-tiered pricing is the greatest single threat to the dealers, the consumers, and to the small towns across the state and is the manufacturer's way of taking control of business without having to pay the price. He said that all dealers support customer satisfaction programs and know that these programs are the bread and butter of a successful dealership. He further said that customer satisfaction is not a "cookie cutter" process and that Ford is attempting to establish such a process. He said that multi-tiered pricing would increase cost and eliminate dealers. Mr. Glaser said that Ford's Blue Oval program violates the state's franchise laws that are in place today.

Representative Nesbitt asked Mr. Glaser why he was opposed to the Blue Oval Certified program and not opposed to other rebate programs based on volume sales.

Mr. Glaser said that it has been a tradition in the industry to reward those dealers who are aggressive and sell many cars, but that such programs should be uniformly applied and administered. He said that the NCADA does not want the manufacturers to come in and treat one dealer, similarly situated, differently from another dealer.

Mr. David Farris, a Rocky Mount Ford dealer and the current chairman of NCADA, was recognized to comment on the legislation. He said that all dealers support strong customer services and innovations. He further stated that Ford has shown a lack of respect for laws passed by North Carolina.

No action was taken on the bill. Chairman Hackney announced that the bill would likely be on the agenda of the July 31, 2001 meeting of the committee.

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 17, 2001
10:00 A.M.

AGENDA

SENATE BILL 470 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
SENATOR DAVID HOYLE

ATTACHMENT II

VISITOR REGISTRATION SHEET

J. I — Name of Committee

7/17/01 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Elks	Leith, Inc.
Linda Leith	Leith, Inc.
Mark Gibson	Capitol Group
Robert Freeman	Freeman Ford Inc.
Wilda Freeman	Freeman Ford, Inc
Elizabeth Freeman Burris	Freeman Ford, Inc.
DAVID HUSHEK	AL SMITH BUICK DODGE MAZDA
MAX PERRY	Al Smith Buick Dodge Mazda
WOODY WEBB	EDMISTEN; WEBB LAW FIRM - GENERAL MOTORS
Doug Wilkinson	Wilkinson Cadillac Sanford NC
Rick Vance	Johnson, Hearn, Vinegar & Gee
Theo Chrispo	Sheans Ford
JON PEDERSON	LEITH INC.
Richard Hall	Leith Inc
Jeff Cunningham	Leith, Inc.
Tommy Harrelson	NCADA
Steve Keene	NC Med Soc.
SHAWN MERCER	Johnson, Hearn, Vinegar & Gee, PLLC
Kerry Powell	NCADA
Sarah Blazenicz	NCADA
Diane M Turner	N. CADA
David Fakkis	NCADA
Traci Houston	Ford Motor Co.
GENE MARSHBURN	JONES FORD CHARLOTTE N.C.
DON PRICE	LAFAYETTE FORD Fayetteville, N.C.
Sherelyn Woolard	HASTINGS FORD Greenville NC
[illegible]	[illegible]
[illegible]	Jones, McKay & Diehl PA

VISITOR REGISTRATION SHEET

J. I — 7/17/01

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B. Edward Tuckey	Hastings Ford Inc Greenville NC
Emily Fridrich	Smith Anderson
Vernon Small	Morehead City Ford Inc, Morehead City
JAMES PINSKY	AAA Carolinas
Larry Bentley	LB Assoc.
Taylor Ward	Southeast Toyota Distributors, LLC
MIKE AFFORD	Marine Chevrolet Olds Cadillac Inc Wilmington, NC
JIM LOWE	ELKINS CHRYS DURHAM
PAT PASCARELLA	FRED ANDERSON TOYOTA
Sam Jamison	Fred Anderson Toyota
[illegible]	Nissan Van Allen
HARRY BROWN	NATIONAL DODGE-VW-SUBARU
JOHN D. COOK	JOHN COOK SUBARU SUZUKI BOONE NC
MARK RYAN	CLASSIC FORD
Bud Freeman	CLASSIC FORD
Don Bullock	Don Bullock Chev Cadi
HUNTER GALLOWAY	GALLOWAY BUICK COMPANY
DAVID BRYAN	NCADA
Sunny Johnson Lewis	Johnson Lexus of Raleigh / Wake Co. Auto Dealers
John Motley	GOV OFFICE
JOHN GOODMAN	LINWOOD MERCER & ASSOC.
Bill Smith	Cape Fear Ford, Wilmington
Lori Ann Harris	L. A. Harris & Assoc
JIM OGBURN	DAVID O'NEAL, INC.
Mary Hall	Hall Chrysler Dodge Jeep Isuzu, Boone, NC
MIKE HALL	" " " "
Barry Bailey	Paul Bailey Chev. Angier N.C.
JOE MORGAN	MORGAN DODGE JEEP, DURHAM NC

VISITOR REGISTRATION SHEET

JI
Name of Committee

7/17/01
Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kay Morgan	Morgan Dodge/Jeep, Durham NC 27705
Curtis Williams	Andrews Ford INC- P.O. B746 Creedmoor 27522
J. Frank Tillman	Frema Mazda-VW Goldsboro NC 27532
Larry H. Howell III	Howell Automotive Group Rocky Mount,

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S D

SENATE BILL 470
Commerce Committee Substitute Adopted 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-PCS9309-SG-29

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent

jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before

the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, 'mediation' means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable

for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to

remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."

SECTION 2.1. G.S. 20-305(30), as amended by Section 2 of this act, reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the

price charged to its franchised dealers located in this state in a manner which would violate this subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2(b) reads as rewritten:

"(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes,~~ trailers or semitrailers."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.**

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State has violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this

subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or dealer:

a. Upon unreasonable and unduly onerous terms or conditions;

b. When the cost of the signage or its installation or maintenance would be unreasonable in light of the franchised new motor vehicle dealer's reasonably anticipated sales volume of new

motor vehicles manufactured or distributed by the manufacturer or current market or economic conditions;

c. If the manufacturer's signage requirements are inconsistent with the signage requirements of one or more other manufacturers whose line makes of new motor vehicles are sold at the same facility;

d. If installation of the additional signage would require removal or relocation of any of the franchised new motor vehicle dealer's existing signs displaying the dealership's name or the name of other line makes of new motor vehicles sold at the same facility; or

e. If installation of the additional signage would violate local signage or zoning laws to which the franchised new motor vehicle dealer is subject.

Any term, provision or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2.1 of this act becomes effective March 1, 2003. All other sections of this act are effective when they become law.

House Judiciary I Committee

July 19, 2001
Minutes

The House Judiciary I Committee met on Thursday, July 19, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Dan Blue called the meeting to order and the following members were present: Representatives Alexander, Blust, Boyd-McIntyre, Clary, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Wellons was recognized to continue the explanation of Senate Bill 936, AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING. A House Committee Substitute, (Attachment III) was given a favorable report on May 17, 2001, but was re-referred to the committee on June 6, 2001. A new proposed committee substitute was distributed to the members of the committee, (Attachment IV).

Representative Sutton moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes made in the new committee substitute. She reminded the members that the bill was introduced to amend the sex offender registration statutes to comply with federal law and to maintain funding eligibility under the Bryne Grant. She said that questions had arisen regarding whether the bill passed on May 17 met criteria set forth for federal approval. She said that the new committee substitute does meet the criteria, and she explained the changes that were made to meet the federal requirements. A bill analysis, prepared by Ms. Sitze is attached, (Attachment V).

Senator Wellons made brief comments on the bill.

Representative Alexander moved a favorable report for House Committee Substitute #2, and an unfavorable report for House Committee Substitute #1. The motion carried, (Attachment VI).

In the absence of Senator Odom, Mr. Frank Folger, Committee Counsel, was recognized to explain Senate Bill 951, AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION, (Attachment VII). Mr. Folger distributed a proposed House Committee Substitute, (Attachment VIII).

Representative Alexander moved adoption for the purpose of discussion. The motion carried.

Mr. Folger stated that the bill prohibits the filing of briefs and memoranda with the Clerk of Court in a civil action unless ordered by the court. The bill also eliminates the necessity of submitting an AOC cover sheet with a subsequent filing in a civil action when certain information is provided in the document itself at certain locations. He said that the objective of these measures is to cut out excess paperwork and to ultimately reduce the amount of storage space that will be required. Mr. Folger also provided background information that led to the changes brought forth by this bill. A bill analysis prepared by Mr. Folger is attached, (Attachment IX).

Representative Hackney was recognized to comment on Section 2 of the bill regarding unnecessary cover sheets. He emphasized the need to eliminate the cover sheet noting how much waste was involved, and the fact that the additional paper served only to enlarge the files in the courthouse.

Ms. Pamela Best, Associate Counsel, Administrative Office of the Courts, was recognized and commented on the purpose for requiring a code on each brief.

Representative Sutton offered an amendment, (Attachment X), requiring that the code be placed on the front page next to the title and moved its adoption

The motion carried.

Representative Hackney offered an amendment, (Attachment XI) to change the effective date of Section 2 of the bill, and moved its adoption.

The motion carried.

Representative Sutton moved that the amendments be rolled into a new committee substitute, that the committee substitute be given a favorable report and that the original bill be given an unfavorable report.

The motion carried, (Attachment XII). A copy of the new House Committee Substitute is attached, (Attachment XIII).

There was no further business to come before the Committee, and the meeting adjourned at 10:50 a.m.

Representative Dan Blue
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, JULY 19, 2001
10:00 A.M.

AGENDA

SENATE BILL 936 – SEX OFFENDER REGISTRATION/CONFORM WITH FEDERAL LAW
SENATOR ALLEN WELLONS

SENATE BILL 951 – PREVENT UNNECESSARY FILING OF BRIEFS
SENATOR FOUNTAIN ODOM

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 19, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christian Talking	NCRTL
John Kerr	NCFPC
Mary McMurray	GOV OFFICE
Mark Ezzell	GCC
Pamela Best	AOC
Beau Mills	NC Metro Coalition
Travis Hill	Rep. Sutton's office
[illegible]	[illegible]
DAVID BARNES	Poyner + Spruill, LLP

Favorable: May 17, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 936

Judiciary I Committee Substitute Adopted 4/16/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S936-CSSA-23 [v.1]

5/16/2001 2:30:02 PM

Short Title: Sex Offender Reg/Conform W/Fed Law. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'Aggravated offense' means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal penile penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal penile penetration with a victim who is less than 12 years old.

~~(1a)~~(1b) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1b)~~(1c) 'Division' means the Division of Criminal Statistics of the Department of Justice.

~~(1c)~~(1d) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1e) 'Nonresident student' means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a full-time basis.

(1f) 'Nonresident worker' means a person who is not a resident of North Carolina but who has full-time or part-time employment in the State,

with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1d)~~(1g) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Recidivist' means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, would have been an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first

degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

SECTION 2. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. ~~Registration~~ Lifetime registration requirements for criminal ~~offenders and for criminal offenders determined to be sexually violent predators.~~ offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal

institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 3. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6C. Discontinuation of registration requirement.**

The period of registration required by any of the provisions of this Article shall be discontinued only if the conviction requiring registration is reversed, vacated, or set aside, or if the registrant has been granted an unconditional pardon of innocence for the offense requiring registration."

SECTION 4. G.S. 14-208.7 is amended by adding a new subsection to read:

"(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence."

SECTION 5. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address.**

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address."

SECTION 6. G.S. 14-208.20 reads as rewritten:

"**§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.**

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause

shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least ~~two people who are~~ four people. Two of the board members shall be experts in the field of the behavior and treatment of sexual offenders, one of whom ~~is~~ shall be selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency. One of the board members shall be a victims' rights advocate, and one of the board members shall be a representative of law enforcement agencies.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings."

SECTION 7. G.S. 14-208.21 reads as rewritten:

"**§ 14-208.21. ~~Registration procedure for sexually violent predator;~~ Lifetime registration procedure; application of Part 2 of this Article.**

~~The~~ Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a person classified as a sexually violent ~~predator unless provided otherwise by this Part.~~ predator, a person who is a recidivist, or a person who is convicted of an aggravated offense. The procedure for registering as a sexually violent ~~predator~~ predator, a recidivist, or a person convicted of an aggravated offense is the same as under Part 2 of this Article."

SECTION 8. G.S. 14-208.22 reads as rewritten:

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency."

SECTION 9. G.S. 14-208.23 reads as rewritten:

"**§ 14-208.23. Length of registration.**

~~The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.~~ A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's life. The requirement of registration shall not be terminated under any circumstances."

SECTION 10. G.S. 14-208.24 reads as rewritten:

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section."

SECTION 11. G.S. 14-208.25 is repealed.

SECTION 12. This act becomes effective December 1, 2001, and applies to offenses committed on or after that date.

ATTACHMENT IV
PCS. July 19, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 936

Judiciary I Committee Substitute Adopted 4/16/01
House Committee Substitute Favorable 5/22/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S936-PCS6331-SA-31

Short Title: Sex Offender Reg/Conform W/Fed Law. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'Aggravated offense' means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

~~(1a)~~(1b) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1b)~~(1c) 'Division' means the Division of Criminal Statistics of the Department of Justice.

~~(1c)~~(1d) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1e) 'Nonresident student' means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a part-time or full-time basis.

(1f) 'Nonresident worker' means a person who is not a resident of North Carolina but who has employment or carries on a vocation in the State, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1d)~~(1g) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Recidivist' means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, ~~would have been~~is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an

offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

SECTION 2. G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. ~~Registration~~Lifetime registration requirements for criminal ~~offenders and for criminal offenders determined to be sexually violent predators.~~offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an

aggravated offense, or who is determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 3. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6C. Discontinuation of registration requirement.**

The period of registration required by any of the provisions of this Article shall be discontinued only if the conviction requiring registration is reversed, vacated, or set aside, or if the registrant has been granted an unconditional pardon of innocence for the offense requiring registration."

SECTION 4. G.S. 14-208.7 is amended by adding a new subsection to read:

"(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence."

SECTION 5. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address.**

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address."

SECTION 6. G.S. 14-208.20 reads as rewritten:

"**§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.**

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek

classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least ~~two people who are~~four people. Two of the board members shall be experts in the field of the behavior and treatment of sexual offenders, one of whom ~~is~~shall be selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency. One of the board members shall be a victims' rights advocate, and one of the board members shall be a representative of law enforcement agencies.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings."

SECTION 7. G.S. 14-208.21 reads as rewritten:

"**§ 14-208.21. ~~Registration procedure for sexually violent predator;~~Lifetime registration procedure; application of Part 2 of this Article.**

~~The~~Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a person classified as a sexually violent ~~predator unless provided otherwise by this Part.~~predator, a person who is a recidivist, or a person who is convicted of an aggravated offense. The procedure for registering as a sexually violent ~~predator~~predator, a recidivist, or a person convicted of an aggravated offense is the same as under Part 2 of this Article."

SECTION 8. G.S. 14-208.22 reads as rewritten:

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency."

SECTION 9. G.S. 14-208.23 reads as rewritten:

"**§ 14-208.23. Length of registration.**

~~The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.~~A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's life. The requirement of registration shall not be terminated under any circumstances."

SECTION 10. G.S. 14-208.24 reads as rewritten:

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section."

SECTION 11. G.S. 14-208.25 is repealed.

SECTION 12. This act becomes effective October 1, 2001, and applies to offenses committed on or after that date.

SENATE BILL 936: Sex Offender Registration/Conform with Federal Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Wellons
Date:	May 10, 2001	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 936 amends the sex offender registration statutes to comply with federal law and to maintain funding eligibility under the Byrne Grant.

BILL ANALYSIS: Senate Bill 936 amends Article 27A of Chapter 14, which deals with sex offender registration programs. The bill adds two new classes of offenders, those who are recidivists and those who commit aggravated offenses, who must register for life rather than the 10-year period of time.

The bill defines "aggravated offense" to be a criminal sexual act involving vaginal penile penetration with a victim of any age through the use of force or threat of violence, or involving vaginal penile penetration with a victim who is less than 12 years old. It defines "recidivist" as one who has a prior conviction requiring sex offender registration.

The bill requires a person who is a nonresident student or nonresident worker in this State to register in the county where the person attends school or works as appropriate.

The bill also requires a sheriff who receives notice from a registrant that the registrant is moving to another state to provide the registrant with notice that they must comply with the new state of residence's registration requirements. The sheriff must also provide the registrant's new address to the Division of Criminal Statistics of the Department of Justice, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

G.S. 14-208.20 provides that, prior to sentencing, a study shall be conducted of the defendant by a board of experts selected by the Department of Correction to determine whether a person is a sexually violent predator. The bill expands this board of experts from two to four. The two new additional members are to be selected by the Department of Correction; one must be a victims' right advocate and one must be a representative of law enforcement agencies.

The bill repeals the statutory provisions that allow a person required to register for lifetime to petition the court to have their names removed from the sexual offender registry after 10 years of good behavior and provides that under no circumstances can the person's name be removed from the registry for the person's lifetime.

The bill clarifies that a person residing in North Carolina who was convicted in a military court of a sex offense must comply with the State's registration requirements.

*Emily Johnson and Al Andrews substantially contributed to this summary

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ House Committee Substitute for
S.B. 936 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGARDING SEX OFFENDER REGISTRATION TO COMPLY WITH FEDERAL LAW IN ORDER TO MAINTAIN ELIGIBILITY FOR BYRNE GRANT FUNDING.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 951
Second Edition Engrossed 4/19/01

Short Title:	Prevent Unnecessary Filing of Briefs.	(Public)
Sponsors:	Senator Odom.	
Referred to:	Judiciary II.	

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice

require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service – Numerous defendants. – In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, ~~and~~ answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the

papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 951
Second Edition Engrossed 4/19/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S951-CSSO-35 [v.4]

6/18/2001 9:50:19 AM

Short Title: Prevent Unnecessary Filing of Briefs. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION, AND TO ELIMINATE THE UNNECESSARY FILING OF COVER SHEETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the

responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service – Numerous defendants. – In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, ~~and~~ answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of

acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-34.1. Unnecessary Cover Sheets.**

A cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts shall not be required for papers filed in civil actions subsequent to the initial filing if such subsequent filing contains:

(a) A caption including the file number, on the first page thereof..

(b) The name, address, and telephone number of the attorney filing the papers or, if the party filing the papers is not represented by an attorney, the name, address, and telephone number of the party filing the papers.

(c) A designation of the party represented by the attorney filing the papers, if an attorney is filing the papers.

(d) The name and designation of "plaintiff", "defendant", "petitioner", "respondent" or other relationship to the action of each other party to the action.

(e) The code or codes, set forth on the last page thereof, corresponding to the codes located on the cover sheet forms promulgated by the Administrative Office of the Courts which apply to the filing.

(f) The signature of the attorney or party filing the paper and the date signed.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 951:
Prevent Unnecessary Filing of Briefs

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Odom
Date:	July 19, 2001	**Summary by:**	Frank W. Folger Committee Counsel
Version:	PCS for 2nd Edition (S951-CSSO-35)		

SUMMARY: ***SB 951 would prohibit the filing of briefs or memorandum with the clerk of court unless ordered by the court. It would also eliminate the requirement of a cover sheet for subsequent filings of documents in civil actions if the document contains certain specific information within its body. The act is effective when it becomes law.***

CURRENT LAW: Filing of Briefs

Rule 5(d) of the North Carolina Rules of Civil Procedure requires that all papers that must be served on a party must also be filed with the court either before service or within five days of service. However, depositions, interrogatories, requests for documents, and answers and responses to requests for documents are specifically exempt from this requirement.

Rule 5(a1)(added by S.L. 2000-127 s. 1) requires that a brief or memorandum in support or opposition of a dispositive motion must be served on all parties at least two days before the hearing on the motion. A dispositive motion includes a motion to dismiss, motion for judgment on the pleadings, motion for summary judgment, and any other motion seeking a final determination of the rights of the parties as to one or more claims in the action.

Filing of Cover Sheets

Rule 5(b) of the General Rules of Practice for the Superior and District Court, adopted by the Supreme Court of North Carolina pursuant to the authority granted in G.S. §7A-34, requires all papers filed in civil actions, special proceedings and estates be accompanied by a cover sheet "summarizing the critical elements of the filing." The Administrative Office of the Courts has developed cover sheet forms to be used. Apart from accepting the paper for filing or dismissing the case, the court cannot take action on the filing until the cover sheet is submitted.

BILL ANALYSIS: Filing of Briefs

The bill would prohibit the filing of briefs and memorandum (provided to the court) with the clerk of court unless the court orders filing. The North Carolina Courts Commission recommended the elimination of this filing requirement.

Filing of Cover Sheets

The bill would also eliminate the need to file a cover sheet with papers filed in a civil action subsequent to the initial filing if the document itself contains specific information summarizing the critical elements of the filing.

BACKGROUND: The prohibition against the filing of briefs and memoranda without court order and the elimination of cover sheets for subsequent filings are changes both designed to reduce the size of court files and, ultimately, the courthouse storage space otherwise needed to maintain these files.

Kory Goldsmith, counsel to the Senate Judiciary II Committee, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT X**

(Please type or use ballpoint pen)

EDITION No. S951-CSSO-35 [v.4]

H. B. No. _____ DATE July 1

S. B. No. 951 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Sutton
Sen.)

1 moves to amend the bill on page 3, line 28
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4 "(e) The code or codes, set forth on the front page, next to
5 the title thereof, corresponding to the "
6
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT XI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 951

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S951-ASO-24 [v.1]

Date July ,2001

Comm. Sub. [YES]
Amends Title [NO]
S951-CSSO-35[v. 4]

Senator

moves to amend the bill on page 3, line 32, by rewriting the line to read:
"**SECTION 3.** Section 2 of this act becomes effective October 1, 2001. The remainder of this act is effective when it becomes law."

SIGNED _____
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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 951 A BILL TO BE ENTITLED AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, 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 House 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 D

SENATE BILL 951
Second Edition Engrossed 4/19/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S951-PCS7266-SO-35

Short Title: Prevent Unnecessary Filing of Briefs. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 5 OF THE RULES OF CIVIL PROCEDURE TO ELIMINATE THE REQUIREMENT OF FILING OF BRIEFS OR MEMORANDA REGARDING DISPOSITIVE MOTIONS WITHIN FIVE DAYS OF SERVICE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION, AND TO ELIMINATE THE UNNECESSARY FILING OF COVER SHEETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers – When required. – Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support or opposition of certain dispositive motions. – In actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served upon each of the parties at least two days before the hearing on the motion. If the brief or memorandum is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the

untimely served brief or memorandum, or take such other action as the ends of justice require. The parties may, by consent, alter the period of time for service. For the purpose of this two-day requirement only, service shall mean personal delivery, facsimile transmission, or other means such that the party actually receives the brief within the required time.

(b) Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service – Numerous defendants. – In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. – All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, ~~and~~ answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. Briefs and memoranda provided to the court may not be filed with the clerk of the court unless ordered by the court. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-34.1. Unnecessary cover sheets.**

A cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts shall not be required for papers filed in civil actions subsequent to the initial filing if such subsequent filing contains:

(1) A caption including the file number, on the first page thereof.

(2) The name, address, and telephone number of the attorney filing the papers or, if the party filing the papers is not represented by an attorney, the name, address, and telephone number of the party filing the papers.

(3) A designation of the party represented by the attorney filing the papers, if an attorney is filing the papers.

(4) The name and designation of "plaintiff", "defendant", "petitioner", "respondent", or other relationship to the action of each other party to the action.

(5) The code or codes, set forth on the first page next to the title thereof, corresponding to the codes located on the cover sheet forms promulgated by the Administrative Office of the Courts which apply to the filing.

(6) The signature of the attorney or party filing the paper and the date signed."

SECTION 3. Section 2 of this act becomes effective October 1, 2001. The remainder of this act is effective when it becomes law.

House Judiciary I Committee

July 24, 2001

Minutes

The House Judiciary I Committee met on Tuesday, July 24, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chairman Martin Nesbitt called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Clary, Gray, Insko, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Clodfelter was recognized to explain Senate Bill 633, AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS, (Attachment III). A proposed House Committee Substitute (Attachment IV) was distributed to members of the committee. Senator Clodfelter also distributed a handout that is included in the attachments to the minutes, (Attachment V).

Representative Gray moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Senator Clodfelter said that the state has experienced a problem in trying to make efficient use of existing public investment in infrastructure in built-up areas in historic and traditional downtowns in cities and smaller towns and in existing residential neighborhoods. He noted that streets, sidewalks, lighting systems, police patrols, and water and sewer systems are already in place. He said that one of the most efficient uses that can be made of the taxpayer investment in those facilities is to encourage the recycling and rehabilitation of the existing buildings that were built in the past in those neighborhoods. He said that one of the biggest deterrents to continuing to invest in those building are building codes that seem to favor, or seem to make it easier to build new buildings in greenfields on the edge of town. Senator Clodfelter stated that the intent of the bill is to try to experiment with ways of redressing that balance and providing an alternative way of rehabilitation in those existing downtowns and neighborhoods in order to foster the use of the infrastructure. He said that the bill has met with support from people interested in affordable housing in the state. Senator Clodfelter continued by saying that the bill would establish a pilot program that utilizes alternative building standards that can be applied for rehabilitation of existing structures, both residential and non-residential. The bill is modeled on the New Jersey Building Code Rehabilitation Code, and is also used by the State of Maryland. The program would call for a local jurisdiction having a population of 650,000 or more (Mecklenburg County), who would have the responsibility and task of fitting the New Jersey code into the North Carolina building code. Mecklenburg County would pay the costs of the program. The new code would be sent to the Department of Insurance for comment. Once the process is completed, the resulting product would be a pilot rehabilitation building code. After approval, any local jurisdiction in North Carolina could opt to use the model code during the pilot period that runs until 2006. In order to use the model, a jurisdiction would have to satisfy the standards that the Department of Insurance has established for delegated local plan review authority. He said that the local plan review authority is a process by which the department satisfies itself that local

building inspection departments are adequately staffed and trained and structured so that they can administer the plan reviews under the state building code. Senator Clodfelter noted that the Department of Insurance has worked with him to conform the bill to the needs and the objectives of the department.

Further explanation of the bill can be found in the analysis prepared by Mr. Frank Folger, Committee Counsel, (Attachment VI).

Mr. Jim Bartl, Director, Building Standards, Mecklenburg County, was recognized and commented briefly on the bill.

Committee discussion followed.

Mr. Bill Hale, Department of Insurance, commented on the bill and responded to questions.

Discussion followed regarding liability of building code decisions made by local building code officials. Chair Nesbitt noted the need for some central authority or local board oversight. Mr. Bartl responded that North Carolina has certification of its code officials.

Representative Arnold noted concern that a certified local building inspector can alter the code on the rehabilitation of a commercial or residential dwelling, as long as the inspector determines that the "intent" of the code was followed.

Chairman Nesbitt questioned the provision in the bill that exempts the jurisdiction from liability from damages arising in a civil action alleging that the pilot code that was used is inconsistent with the North Carolina building code.

Senator Clodfelter stated that the intent of the bill was to say that there would be no greater liability, or lesser liability, for administering the new code than whatever liability exists in the administration of the current building codes.

The following people were recognized and spoke in support of the bill:

Mr. Beau Mills, Metropolitan Coalition and the North Carolina League of Municipalities
Mr. David Crawford, Executive Director, American Institute of Architects
Mr. Don Hobart, North Carolina Department of Commerce
Ms. Mary Carnilia, Real Estate and Building Industry Coalition
Mr. Tim Minton, North Carolina Home Builders Association
Mr. Jim Phillips, City of Greensboro

Mr. Folger commented briefly on the bill

An amendment regarding the liability issue was offered by Representative Martha Alexander, (Attachment VII), who moved its adoption. The amendment would neutralize the liability provision giving no additional immunity or lesser immunity to any party. The amendment was adopted.

Representative Alexander moved that the amendment be rolled into a new House committee substitute, that the committee substitute be given a favorable report and that the Senate committee substitute bill be given an unfavorable report. The motion carried, (Attachment VIII). A copy of the new committee substitute is attached, (Attachment IX).

The meeting was adjourned at 10:50 a.m.

Representative Martin Nesbitt
Vice Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 24, 2001
10:00 A.M.

AGENDA

SENATE BILL 633 – BUILDING CODE PILOT PROGRAM
SENATOR DANIEL CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 24, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Francis	Meck Cnty
Jim Ranty	Meck County
David Crawford	AIA
Beau Mills	NC Metro Coalition
Andy Hale	NCDOI
Mary Carmichael	REBIC
Tim Minton	NC Home Builders Assn
Tom Cover	BPMHL
Jennifer Wasson	BPMHL
Jim Pullin	"
Matt Brady	CCNC
Benjamin Gaddis	NC Sierra Club
Bill Morrill	NCDCA
Catherine Liao	Governors Office
Harold Webb	NCADA
Susan Valaani	Nationwide
Andy Romanet	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 633*

Insurance and Consumer Protection Committee Substitute Adopted 4/24/01

Short Title: Building Code Pilot Program. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. There is established a pilot program to utilize building code standards that are based on the Maryland Building Rehabilitation Code, the New Jersey Building Rehabilitation Code, or a combination of the two codes ("pilot building code") for the purpose of promoting affordable housing. The pilot shall be administered by the Department of Insurance. The county, in consultation with the Department, shall develop and implement local building code standards to be effective for a period of four years, from January 1, 2002, to January 1, 2006, at which time the pilot program shall expire.

Notwithstanding any other provision of law, during the four-year period of the pilot program, the pilot building code shall be enforced as if it were statutorily mandated and approved by the State Building Code Council. The county and its officers, directors, and employees enforcing that pilot building code shall not be liable to any person on the basis that the pilot building code used and enforced is not consistent with the statewide building code in effect from January 1, 2002, to January 1, 2006. In addition, buildings or projects built in compliance with the pilot building code shall not be required to be retrofitted to come into compliance with the applicable statewide building code once the pilot program expires.

SECTION 2. The Department of Insurance shall submit an interim report on the effectiveness of the pilot program to the General Assembly on or before December 1, 2004, and shall submit a final report to the General Assembly on or before April 1, 2006. The final report shall include recommendations as to whether the pilot program should be extended or made permanent and any legislative recommendations, including whether the building code standards authorized by this act should be incorporated in the General Statutes as part of the statewide building code.

SECTION 3. The Legislative Research Commission may conduct a comprehensive study of the building code pilot program and the concept of the building code pilot program. The Commission may address all issues that the Commission considers relevant to the study including, but not limited to, whether the building code pilot program should be expanded or be made applicable statewide.

If the Legislative Research Commission undertakes the study, it shall report its findings and recommendations, including any recommended legislation, to the 2002 Regular Session of the 2001 General Assembly.

SECTION 4. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. The Department shall implement this act with funds available to the Department.

SECTION 5. This act is effective when it becomes law and only applies to counties with populations of 650,000 or more according to the most recent decennial federal census.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 633*

Insurance and Consumer Protection Committee Substitute Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S633-CSSO-55 [v.6]

7/24/2001 9:05:13 AM

Short Title: Building Code Pilot Program. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. There is established a pilot program to utilize building code standards to promote rehabilitation of existing buildings in participating jurisdictions. As part of the pilot program, the lead local jurisdiction, as described in Section 3 of this act, shall develop a pilot rehabilitation building code ("pilot code") based on the New Jersey Uniform Construction Code Rehabilitation Subcode ("New Jersey model code"), codified at Title 5, Chapter 23, Subchapter 6 of the New Jersey Administrative Code, (cited as N.J.A.C. 5: 23-6). The lead local jurisdiction shall develop the pilot code in consultation with the North Carolina Department of Insurance ("Department") and in accordance with procedures established in this act. Within one hundred and eighty (180) days of the effective date of this act, the lead local jurisdiction shall cross-reference the pilot code to the North Carolina State Building Code (NCSBC), Volumes I, II, III, IV, V, VI, VII, IX and I-C and deliver the cross-referenced pilot code to the Department for comment. Within thirty (30) days thereafter, the Department shall submit its comments, if any, on the pilot code to the lead local jurisdiction. The comments, if any, shall address insuring proper coordination and cross-referencing of the pilot code to the existing NCSBC chapters but shall not include substantive changes to the standards established by the New Jersey model code. Within thirty (30) days after receipt of comments by the Department or, if no comments are received, upon expiration of the comment period, the lead local jurisdiction shall incorporate any comments as may have been received, and the resulting document shall then become the pilot code for purposes of this act.

SECTION 2. Any eligible local jurisdiction, as defined in Section 3 of this act, may elect to participate in the pilot program by adopting the pilot code and by communicating to the Department and the lead local jurisdiction that its governing body

has adopted the pilot code in accordance with this act. Any participating jurisdiction, as defined in Section 3 of this act, shall use the pilot code established by the lead local jurisdiction as set forth in section 1 of this act. Notwithstanding any other provision of law, during the period of the pilot program established by this act, the pilot code shall be enforced in any participating jurisdiction as if it were statutorily mandated and approved by the North Carolina Building Code Council ("Building Code Council"). The lead local jurisdiction and other participating jurisdictions, and their officers, directors, and employees enforcing the pilot code shall not be liable for damages arising from any civil action or proceeding alleging that the pilot code used and enforced is inconsistent with the NCSBC in effect during the period of the pilot program. In addition, buildings or projects built in compliance with the pilot code shall not be required to be retrofitted to come into compliance with the NCSBC once the pilot program expires.

SECTION 3. For purposes of this Act, "eligible local jurisdictions" means cities and counties whose local building inspection departments have been approved by the Building Code Council to do local plan review approval in accordance with Section 602.2.3 of the Administrative Volume of the North Carolina State Building Code, and "participating jurisdictions" means eligible local jurisdictions electing to adopt the pilot code in accordance with this act. Any eligible local jurisdictions having a population of more than 650,000 persons according to the most recent decennial census may qualify as a "lead local jurisdiction" for purposes of this act. If more than one eligible local jurisdiction shall qualify as a lead local jurisdiction, then the responsibilities of the lead local jurisdiction under this act shall be borne jointly by such eligible local jurisdictions. Within thirty (30) days of the effective date of this act, any eligible local jurisdiction that qualifies and intends to act as a lead local jurisdiction shall notify the Department of its intention. Upon the expiration of such time, those eligible local jurisdictions providing notice shall constitute the lead local jurisdictions for all further purposes under this act.

SECTION 4. For each lead local jurisdiction, the period of the pilot program established by this act shall commence upon adoption of the pilot code by the governing body of the lead local jurisdiction. For all other participating jurisdictions, the pilot program shall commence on the date the eligible local jurisdiction communicates to the Department and the lead local jurisdiction that its governing body has adopted the pilot code. The pilot program shall expire for each lead local jurisdiction and all participating jurisdictions on January 1, 2006.

SECTION 5. The lead local jurisdiction shall bear all costs and expenses incurred in developing the pilot code, other than expenses incurred directly by the Department in providing comments and review. Each participating jurisdiction shall bear all expenses associated with administering the pilot code in its jurisdiction. The lead local jurisdiction shall bear all expenses associated with the reporting requirements set forth in Section 6, except that each participating jurisdiction shall bear the expenses associated with assembling and compiling utilization statistics for that jurisdiction. This act shall not be construed to obligate the General Assembly to appropriate funds to

implement the provisions of this act. The Department shall carry out its responsibilities under this act with funds available to the Department.

SECTION 6. The lead local jurisdiction shall submit to the Building Code Council, the Department, and to the General Assembly both an interim report on the effectiveness of the pilot program on or before December 1, 2004, and a final report on or before April 1, 2006. The final report shall include:

(1) a survey and statistics on the utilization of the pilot code in participating jurisdictions;

(2) an analysis of administrative and cost issues associated with implementing the pilot code in participating jurisdictions;

(3) recommendations as to whether the pilot program should be extended or made permanent; and

(4) any legislative recommendations, including whether the pilot code standards authorized by this act should be incorporated in the General Statutes as part of the statewide building code.

SECTION 7. This act is effective when it becomes law.

SB 633: Building Code Pilot Program

A bill to be entitled an act to establish a building code pilot program for rehabilitating existing buildings.

Introduced by Senator Dan Clodfelter

- Sets up a pilot program in counties with a population of 650,000 or more
- Utilizes building code standards based on the Maryland and/or New Jersey Rehabilitation Codes
- Will promote affordable housing
- Promotes stronger downtowns and Main Streets
- Focuses development on existing infrastructure
- Proposed new rehab code will apply to more historic buildings than does the NC Rehab Code
- Current NC Rehab Code is limited and is unavailable for rehabilitation of single family residential buildings
- Current NC Code applies only to commercial structures built prior 1936
- Current NC Code applies only to residential structures built prior to 1972
- Proposed new rehab code will allow local officials to accept alternative compliance measures as long as there is compliance with code intent
- Proposed new rehab code places greater emphasis with intent of the code
- Proposed new code focuses on the scope and location of the building's safety features

Supporters include:

NC League of Municipalities
NC Metro Coalition
NC Association of County Commissioners
NC Association of Realtors
Real Estate and Building Industry Coalition
NC Home Builders Association
Preservation North Carolina
Conservation Council of North Carolina
Apartment Association of NC
American Institute of Architects – NC Chapter
Mecklenburg County
Charlotte Chamber of Commerce
Charlotte Apartment Association
NC Sierra Club
American Planning Association – NC Chapter
Downtown Developers Association
Smart Growth Alliance

Subject	NCSBC – VOLUME IX	MARYLAND REHAB CODE
Administrative	Cannot be used for: 1 and 2 Family Residential, Day Care Centers, Farm Buildings, Hazardous, High-Rises, Institutions, Residential Care	Can be used for all structures
	Offers three options a) Comply with Volume IX b) Comply with original code c) Comply with current Building Code	Offers current three options, plus 6 other classifications: a) Repair, b) Renovation, c) Modification, d) Reconstruction, e) Change of Occupancy, f) Addition ♦ Where compliance is not technically feasible, or undue hardship . Authority Having Jurisdiction (AHJ) allowed to accept other alternates
	No equivalent	Preliminary meeting with AHJ required ♦ AHJ may require building evaluation by license Architect and Engineer (A&E), addressing non-conformance with this code
Historic	♦ Building must be certified ♦ Limit on application: pre-1936 for commercial; pre-1972 for dwellings ♦ Consideration by local authority if adherence to code = demo of significant features	♦ Historic defined as: listed in national register, certified as contributing to or in locally designated historic district ♦ No other limits
	No equivalent	<u>Other provisions:</u> Requires a report in writing by licensed A&E ♦ Identify where compliance would be damaging to historical feature ♦ Show how intent of code is complied with ♦ State historic presentation officer may comment Offers alternate provisions (waiver process), if accessibility compliance adversely impacts historic nature <u>If Historic Change of Use:</u> ♦ Building area may exceed allowable tables by 20% ♦ Building separation may exceed if licensed professional shows compliance with intent of code <u>Note:</u> This is a typical difference between Volume IX and Maryland Rehab Code with the latter seeking compliance with intent of code, whereas Volume IX relies on alternate material and methods to achieve <u>equal</u> performance. (But two items are never equal.)
Minimum Standard for Existing Building	**Existing Chapter 4**	**Reconstruction**- Reconfiguring space affecting exits or exit access by more than one tenant
	Exit/Egress components ♦ Stipulates maximum door, stair, common width	Allows existing exit component width to remain
	All shafts (stair, elevator, mechanical) must be rated: ♦ 3 story ≤ 1 hour (burn rate) ♦ 4 story ≥ 2 hour (burn rate)	New vertical opening comply with building code Existing vertical opening with minimum one hour enclosure • With exceptions on variations for uses A, B, E, F, M, R-1, R-2 ♦ Where work area > 50% of floor requirements applies to entire floor ♦ And those stairs must be smoke tight ♦ If work area > 50% building area, egress stair to comply from highest work area down

Subject	NCSBC – VOLUME IX	MARYLAND REHAB CODE
	Comply with accessibility code	Comply with accessibility code
	Handrails: ♦ Handrails must be minimum 30" above tread or ramp ♦ Guards must be minimum 36" high	Stipulates location of handrail on 1 or 2 sides ♦ If none existing, must comply with building code Stipulates location of guards If none existing, comply with building code
	Materials; combustible material allowed ♦ Material flame spread/classification by use charted ♦ Fire retardant paint allowed; must be renewed ♦ Textiles allowed on walls and ceiling with flame spread limit	Existing interior finishes non compliant with code to be treated with fire retardant coating ♦ Where work area exceeds 50% of floor, apply to entire floor Where work area exceed 50% of building, apply to building exits from highest work area down
Change of Occupancy	♦ Occupancy may change if you comply with Chapter 4 or 6 ♦ Provides hazard category table ♦ If change to higher hazard, comply with Chapter 6	♦ Comply with requirements for repair, renovation or modification criteria ♦ If change of use to higher hazard, comply with reconstruction requirements Historic change of use refer to separate criteria
	♦ Existing building exceeds current building code height and area ♦ May change occupancy to lesser hazards ♦ If new use, comply with height and area for original code	Change to higher hazard requirements compliance with building code height and area limitations ♦ For change to an equal or lesser hazard, existing height and area is acceptable Note: MRC Table B far more flexible than Volume IX Table 501: example: allows you to move between residential, business, mercantile and factory industrial with no penalty
Chapter 5 – Residential 1&2 Family Code	Buildings existing at Code adoption may continue Additions/Alterations shall conform to the code for new structures <u>Practically, this means:</u> ♦ Any residence must have complied with the original code under which it was built ♦ If the Chief Enforcement Officer thinks it did, no other work will be required on existing areas untouched ♦ Any additions/alterations must comply with the code (if you touch it, must comply)	The work shall not make the building less conforming. All newly constructed elements shall comply with requirements of the building code Provides hardship exception for technically infeasible requirements or structural, construction or dimensional difficulties. ♦ Other alternates may be accepted by the AHJ

Comparison of NCSBC Existing Building Code, Volume IX and Maryland Rehab Code

	NCSBC Existing Building Code, Volume IX	Maryland Rehab Code
Availability	Cannot be used for 7 building types including single family residential	Can be used for any building type
Historic Flexibility	Flexibility for historic buildings can only be used for those on national historic register	Flexibility for buildings on national historic register, certified contributing buildings or buildings in locally designated historic districts
Historic Flexibility	Only commercial structures built prior to 1936 or residential built prior to 1972 are eligible	No date restrictions
Historic Flexibility	No allowance for alternative measures to comply with intent of code	Allows local officials to accept alternative compliance measures if a licensed Architect and Engineer (A&E) show compliance with code intent
Change of use	Uses a 51 point scoring system/evaluation process if changing use which is valuable for large projects but not small	Gradually increases code requirements as scope of work increases
Code based on scope of work	No basis on scope of work	Small projects require less stringent code requirements. Uses 50% rule: If work is on less than 50% of floor or building, then only area being worked on must comply. If greater than 50% of floor or building is worked on, then entire floor or building is subject to code requirements.
Equal methods vs. intent of code	Requires alternate materials and methods to be equal (a difficult standard to reach)	Places greater emphasis with intent of the code.
Technical dimensions vs. scope	Requires strict compliance with specified widths, distances and other measures	Focuses on scope and location of building safety features, emphasizing ability to handle user load.

SENATE BILL 633: Building Code Pilot Program

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	July 24, 2001	**Summary by:**	Frank W. Folger
Version:	S633-CSSO-55		Committee Counsel

SUMMARY: ***This bill would establish a pilot program that utilizes building code standards based on the New Jersey Building Code Rehabilitation Subcode in conjunction with the statewide building code, to promote rehabilitation of existing buildings in participating jurisdictions. Effective upon becoming law.***

BILL ANALYSIS: The bill would establish a pilot program to utilize building code standards based on the New Jersey Building Rehabilitation Code. The program would consist of:

1. Development of a pilot rehabilitation building code ("pilot code") by a "lead local jurisdiction" in consultation with the Department of Insurance. (*Section 1 of the bill*)
2. Implementation by participating jurisdictions adopting the pilot code. (*Section 2 of the bill*)
3. Study and reporting on its cost and effectiveness of the pilot program, including recommendations for continuation or expansion of the program statewide. (*Section 6 of the bill*)

KEY TERMS IN THE BILL:

"Eligible local jurisdiction" – city or county whose local building inspection department has been approved by the Building Code Council to do local plan review approval in accordance with the N.C. State Building Code.

"Participating jurisdiction" – eligible local jurisdiction electing to participate in the program by adopting the pilot code and notifying the Department of Insurance and the lead local jurisdiction of adoption of the pilot code by its governing body.

"Lead local jurisdiction" – an eligible local jurisdiction with a population of 650,000 or more that intends to develop the pilot code and adopt it and notifies the Department of Insurance of that intention within 30 days of the effective date of the act.

OTHER IMPORTANT PROVISIONS OF THE BILL:

- The pilot program would be cross-referenced with the current statewide building code and be enforceable as if statutorily mandated and approved by the Building Code Council.
- Upon expiration of the pilot program, retrofitting of buildings would not be required.
- Participating jurisdictions and their agents would be immune from liability for any claims based on inconsistency of the pilot code with the then current statewide building code.
- The lead local jurisdiction would bear the expense of developing the pilot code and reporting, with a few exceptions; each participating jurisdiction would bear the cost of administering the program in its own jurisdiction; the Department of Insurance would bear the cost for its responsibilities; and the General Assembly would have no funding obligation for the program.
- The pilot program expires January 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen)

EDITION No. S633-CSSO-55 [V.6]

H. B. No. _____ DATE July 24, 2001

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Alexander
Sen.)

1 moves to amend the bill on page 2, lines 7 - 10
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to read:
4 "local jurisdiction and other participating jurisdictions,
5 and their officers, directors, and employees enforcing the
6 pilot code shall not be subject to liability for damages to
7 any greater or lesser extent arising from participation
8 in the pilot program than under current law."
9
10
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16
17
18
19

SIGNED Michael B. Alexander

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(s) **Nesbitt** (Vice Chair) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 633 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

☐ 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 D

SENATE BILL 633*

Insurance and Consumer Protection Committee Substitute Adopted 4/24/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S633-PCS1218-SO-55

Short Title: Building Code Pilot Program. (Public)

Sponsors:

Referred to:

March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BUILDING CODE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. There is established a pilot program to utilize building code standards to promote rehabilitation of existing buildings in participating jurisdictions. As part of the pilot program, the lead local jurisdiction, as described in Section 3 of this act, shall develop a pilot rehabilitation building code ("pilot code") based on the New Jersey Uniform Construction Code Rehabilitation Subcode ("New Jersey model code"), codified at Title 5, Chapter 23, Subchapter 6 of the New Jersey Administrative Code, (cited as N.J.A.C. 5: 23-6). The lead local jurisdiction shall develop the pilot code in consultation with the North Carolina Department of Insurance ("Department") and in accordance with procedures established in this act. Within 180 days of the effective date of this act, the lead local jurisdiction shall cross-reference the pilot code to the North Carolina State Building Code (NCSBC), Volumes I, II, III, IV, V, VI, VII, IX, and I-C and deliver the cross-referenced pilot code to the Department for comment. Within 30 days thereafter, the Department shall submit its comments, if any, on the pilot code to the lead local jurisdiction. The comments, if any, shall address insuring proper coordination and cross-referencing of the pilot code to the existing NCSBC chapters but shall not include substantive changes to the standards established by the New Jersey model code. Within 30 days after receipt of comments by the Department or, if no comments are received, upon expiration of the comment period, the lead local jurisdiction shall incorporate any comments as may have been received, and the resulting document shall then become the pilot code for purposes of this act.

SECTION 2. Any eligible local jurisdiction, as defined in Section 3 of this act, may elect to participate in the pilot program by adopting the pilot code and by communicating to the Department and the lead local jurisdiction that its governing body has adopted the pilot code in accordance with this act. Any participating jurisdiction, as

defined in Section 3 of this act, shall use the pilot code established by the lead local jurisdiction as set forth in Section 1 of this act. Notwithstanding any other provision of law, during the period of the pilot program established by this act, the pilot code shall be enforced in any participating jurisdiction as if it were statutorily mandated and approved by the North Carolina Building Code Council ("Building Code Council"). The lead local jurisdiction and other participating jurisdictions, and their officers, directors, and employees enforcing the pilot code shall not be subject to liability for damages to any greater or lesser extent arising from participation in the pilot program than under current law. In addition, buildings or projects built in compliance with the pilot code shall not be required to be retrofitted to come into compliance with the NCSBC once the pilot program expires.

SECTION 3. For purposes of this act, "eligible local jurisdictions" means cities and counties whose local building inspection departments have been approved by the Building Code Council to do local plan review approval in accordance with Section 602.2.3 of the Administrative Volume of the North Carolina State Building Code, and "participating jurisdictions" means eligible local jurisdictions electing to adopt the pilot code in accordance with this act. Any eligible local jurisdictions having a population of more than 650,000 persons according to the most recent decennial census may qualify as a "lead local jurisdiction" for purposes of this act. If more than one eligible local jurisdiction shall qualify as a lead local jurisdiction, then the responsibilities of the lead local jurisdiction under this act shall be borne jointly by such eligible local jurisdictions. Within 30 days of the effective date of this act, any eligible local jurisdiction that qualifies and intends to act as a lead local jurisdiction shall notify the Department of its intention. Upon the expiration of such time, those eligible local jurisdictions providing notice shall constitute the lead local jurisdictions for all further purposes under this act.

SECTION 4. For each lead local jurisdiction, the period of the pilot program established by this act shall commence upon adoption of the pilot code by the governing body of the lead local jurisdiction. For all other participating jurisdictions, the pilot program shall commence on the date the eligible local jurisdiction communicates to the Department and the lead local jurisdiction that its governing body has adopted the pilot code. The pilot program shall expire for each lead local jurisdiction and all participating jurisdictions on January 1, 2006.

SECTION 5. The lead local jurisdiction shall bear all costs and expenses incurred in developing the pilot code, other than expenses incurred directly by the Department in providing comments and review. Each participating jurisdiction shall bear all expenses associated with administering the pilot code in its jurisdiction. The lead local jurisdiction shall bear all expenses associated with the reporting requirements set forth in Section 6, except that each participating jurisdiction shall bear the expenses associated with assembling and compiling utilization statistics for that jurisdiction. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. The Department shall carry out its responsibilities under this act with funds available to the Department.

SECTION 6. The lead local jurisdiction shall submit to the Building Code Council, the Department, and to the General Assembly both an interim report on the effectiveness of the pilot program on or before December 1, 2004, and a final report on or before April 1, 2006. The final report shall include:

(1) A survey and statistics on the utilization of the pilot code in participating jurisdictions;

(2) An analysis of administrative and cost issues associated with implementing the pilot code in participating jurisdictions;

(3) Recommendations as to whether the pilot program should be extended or made permanent; and

(4) Any legislative recommendations, including whether the pilot code standards authorized by this act should be incorporated in the General Statutes as part of the statewide building code.

SECTION 7. This act is effective when it becomes law.

House Judiciary I Committee

July 31, 2001

Minutes

The House Judiciary I Committee met on Tuesday, July 31, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Insko, Nesbitt, Redwine, Sutton and Walker. Representative Dedmon, Ex-Officio member also attended. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that the committee would consider amendments to the Proposed House Committee Substitute for Senate Bill 470, AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW, (Attachment III), which had been previously discussed during the July 10, 2001 meeting.

Representative Sutton offered an amendment, (Attachment IV) which would grandfather factory-owned RV dealers as of October 1, 2001. Representative Sutton noted that RV dealers and automobile dealers were in support of the amendment, and he moved its adoption.

The amendment was adopted.

Representative Sutton offered a second amendment, (Attachment V). The amendment would modify the signage language in the bill.

Mr. Rick Zechini, Committee Counsel, was recognized for further explanation of the amendment. Mr. Zechini stated the amendment would allow that a manufacturer could not force or coerce a dealer through unreasonable terms or conditions to buy or lease signs for placement in their dealerships.

Committee discussion followed.

Mr. Robert Glaser, North Carolina Automobile Dealers Association, spoke in support of the amendment.

Mr. Henry Jones, representing the automobile manufacturers, spoke in support of the amendment.

Upon vote of the committee, the amendment was adopted.

Representative Sutton offered a third amendment, (Attachment VI), and moved its adoption. He also noted the need for a technical change on lines 7 and 16 of the bill from December 31, 2006, to 2007. The amendment would extend the pre-existing incentive programs for Volvo, BMW, Land Rover and

Mercedes, and allows changes in those existing programs as long as those changes are consistent with the intent and purpose of the program. He said that the amendment does not affect Ford's Blue Oval Program.

Mr. Glaser expressed support for the amendment saying that it addresses programs that pre-existed prior to 1997-1999, and does not affect programs created after 1999.

Mr. Jones expressed concern that the amendment created a form of disparity or an equal protection issue.

Mr. Davis Horne, representing Ford Dealers, introduced Mr. Vernon Small, a Ford dealer from Morehead City. Mr. Small spoke regarding the way in which treatment for one group of manufacturers discriminates against the Ford dealers.

Considerable committee discussion followed.

Representative Nesbitt moved that the amendment be displaced until additional amendments have been offered. The motion carried and the amendment was displaced.

Representative Gray offered an amendment, (Attachment VII). The amendment would remove subsection (38) of the bill.

Chairman Hackney said that substance of subsection (38) is that notwithstanding any agreement, it is unlawful to assign or change a franchised new motor vehicle dealers' area of responsibility arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registration.

Senator Holye asked if the subcommittee had discussed this issue. He also stated that he felt the amendment would do real damage to the bill.

Representative Sutton stated that the subcommittee had been close to agreement on subsection (38). Mr. Glaser agreed with Representative Sutton. Mr. Jones said that the subcommittee never could come to terms with the language.

Mr. Paul White, Universal Chevrolet Company, Wendell, North Carolina, spoke in opposition to the amendment.

Mr. Taylor Ward, an attorney for southeast Toyota, spoke in support of the amendment.

Speaking in opposition to the amendment were: Representatives Nesbitt and Arnold, and Senator Hoyle.

Upon vote of the committee, the amendment was defeated.

Chairman Hackney stated that additional amendments would be considered during the next meeting of the committee.

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 31, 2001
10:00 A.M.

AGENDA

SENATE BILL 470 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
SENATOR DAVID HOYLE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 31, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard J Vinegar	~~attorney~~
SAM JOHNSON	ATTY
N. Bryan	NCADA
Rob Ray	NCADA
Jack D Parker	NCADA
Lori Ann Harris	LA Harris & Assoc
Jim Lowry	NCADA.
DAVID WESTCOTT	NCADA - Burlington
James Barber	NCADA - Madison
DAVID BRYAN	NCADA - Fayetteville
Tommy Harrelson	Lobbyist
Diane M Turner	NCADA
Sarah Blazevicc	NCADA
Kerry Powell	NCADA
Theo Crespo	
Elizabeth FitBurris	Freeman Ford, Inc
Della Freeman	Freeman Ford, Inc.
Pat Harris	Welford Harris, Inc
Trey Bullock	NCADA
Bruce A. Biggs	Biggs Pontiac INC
Jane Pinsky	AAA Carolinas
Paul White	Universal Chev. Cooper
Vernon Small	Morehead City Ford

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 470

Commerce Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-PCS9309-SG-29

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent

jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before

the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, 'mediation' means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable

for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to

remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."

SECTION 2.1. G.S. 20-305(30), as amended by Section 2 of this act, reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the

price charged to its franchised dealers located in this state in a manner which would violate this subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2(b) reads as rewritten:

"(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes,~~ trailers or semitrailers."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.**

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State has violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this

subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or dealer:

a. Upon unreasonable and unduly onerous terms or conditions;

b. When the cost of the signage or its installation or maintenance would be unreasonable in light of the franchised new motor vehicle dealer's reasonably anticipated sales volume of new

motor vehicles manufactured or distributed by the manufacturer or current market or economic conditions;

c. If the manufacturer's signage requirements are inconsistent with the signage requirements of one or more other manufacturers whose line makes of new motor vehicles are sold at the same facility;

d. If installation of the additional signage would require removal or relocation of any of the franchised new motor vehicle dealer's existing signs displaying the dealership's name or the name of other line makes of new motor vehicles sold at the same facility; or

e. If installation of the additional signage would violate local signage or zoning laws to which the franchised new motor vehicle dealer is subject.

Any term, provision or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2.1 of this act becomes effective March 1, 2003. All other sections of this act are effective when they become law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-64 [v.3]

Date July 31 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-29

Representative SUTTON

moves to amend the bill on page 7, lines 16 through 18, by rewriting the lines to read:

"**SECTION 3.** G.S. 20-305.2 reads as rewritten:

'**§ 20-305.2. Unfair methods of competition.**

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit:

...

(7) The ownership, operation, or control of a dealership that sells primarily recreation vehicles as defined in G.S. 20-4.01(32a) by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.

(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes, or semitrailers.~~trailers or semitrailers that are not recreation vehicles as defined in G.S. 20-4.01(32a).'".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-64 [v.3]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S470-ASG-62 [v.2]

Date July 31 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-29

Representative

moves to amend the bill on page 9, line 34, through page 10, line 14, by rewriting the lines to read:

"(39) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable and onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-63 [v.4]

Date July 31 .2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-29

Representative

moves to amend the bill on page 5, lines 9 through 12, by rewriting the lines to read:

"lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2006. Any manufacturer shall be required to"; and

on page 7, lines 3 through 6, by rewriting the lines to read:

"for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2006. Any".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-63 [v.4]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

S470-ASG-35 [v.1]

Date July 31 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-24

Representative

moves to amend the bill on page 9, lines 12 through 34, by rewriting the lines to read:

(38) Notwithstanding the terms, provisions or conditions of any agreement,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

August 7, 2001

Minutes

The House Judiciary I Committee met on Tuesday, August 7, 2001 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blue, Boyd-McIntyre, Blust, Clary, Insko, Nesbitt, Sutton and Walker. Representative Dedmon, Ex-officio member, was also present. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the committee would resume its consideration of the proposed House Committee Substitute for Senate Bill 470, AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW, (Attachment III), and opened the floor for amendments. The bill was discussed during the July 10 and July 17, 2001 meetings of the committee

Representative Nesbitt offered an amendment, (Attachment IV).

Mr. Rick Zechini, Committee Counsel, was recognized for an explanation of the amendment. Mr. Zechini stated that the amendment would delete the standing provision to file a cause of action that is given to the North Carolina Automobile Dealers Association and the Motorcycle Dealers Association in the bill, and keep North Carolina law as it currently is.

Representative Nesbitt stated that he thought the state would establish a bad precedent if it allowed an association with more that 400 members to bring actions on behalf of the group. He moved adoption of the amendment.

Representative Sutton asked if other states had granted standing to associations. Senator Hoyle replied that Georgia and West Virginia have had legal standing for about two years. He said that it had not been used in either state.

Senator Hoyle spoke in opposition to the amendment. He said that many of the franchise laws that are currently in place are often being ignored by the manufacturers. It said that it is very difficult for small hometown dealers to bring a lawsuit against a multi-billion dollar company. He said that the provision would give the dealers and their association the opportunity, collectively, to come together with standing when actions taken by the manufacturer would hurt all the dealers.

Representative Arnold spoke in opposition to the amendment.

Representative Sutton stated that he felt the association should have the opportunity to have the right to have standing, and if it does not work, the law can be changed.

Mr. Henry Jones, representing automobile manufacturers, was recognized and spoke in support of the amendment.

Upon vote of the committee, the amendment failed.

Representative Nesbitt offered a second amendment, (Attachment V). He said that the amendment would grandfather any incentive programs that are currently in existence and would prohibit any new ones for a two-year period until the issue can be studied.

Representative Sutton spoke in opposition to the amendment. He further stated that he felt that the Blue Oval program is in violations of present North Carolina law.

Senator Hoyle spoke in opposition to the amendment. He said Ford Motor Company has ignored North Carolina law, and he feels they will continue to ignore North Carolina law by circumventing our franchise laws. He said that Ford has changed the level playing field among the dealers and is working to gain operational control of some of the dealers.

Representative Insko said that she did not support additional restrictions on incentive programs and expressed support for additional study of the issue.

Representative Alexander asked if there were any states that totally ban incentive programs from manufacturers. Senator Hoyle replied that a number of states are studying the issue currently. He said that fourteen states have language in their franchise laws regarding multi-tiered pricing, but they have not been tested in the courts.

Representative Walker spoke in support of the amendment.

Representative Sutton asked why the legislature would support a program that is in direct violation of North Carolina law and allow it to go forward. He said that he could support incentive programs that are lawful, and could support the Blue Oval program if changes were made to bring it into compliance with North Carolina law.

Upon vote of the committee, the amendment failed.

Representative Arnold moved that the amendments adopted at the previous meeting be rolled into a new House committee substitute, that the committee substitute be given a favorable report, and that the Senate committee substitute be given an unfavorable report. The motion carried, (Attachment VI). A copy of the committee substitute is attached, (Attachment VII).

The meeting adjourned at 10:55.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, AUGUST 7, 2001
10:00 A.M.

AGENDA

SENATE BILL 470 – CLARIFY MOTOR VEHICLE FRANCHISE LAWS
SENATOR DAVID HOYLE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

August 7, 2001 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rich J Vinegar	atty
John Goodman	Linwood Mercer & Assoc.
Shawn Mercer	Atty
Mack Paul	Smith Helms
Sharon Matthews	DOT / DMV
Emily Fulghum	Smith Anderson
Roney W. Hamm, JR.	Citi Financial / Cit. Groups.
Thos Capps	
W.C. Imhoff	Burlington M/R's
Larry H. Howell	Howell Automotive Group
Della Freeman	Freeman Ford Inc.
David Freeman	Freeman Ford Inc.
Pat Harris	Wilford Harris, Inc.
Fred Caldwell	Fred Caldwell Chevrolet
Bill Brown	Brown Wood Ray Pa Cameron Pa
Bud Freeman	Classic Ford Lincoln Mercury
Leland Tucker	Hastings Ford Inc
Sherelyn Woodard	Hastings Ford
Tim Harnell	Lee Motor Co Wilson
Norwood Jackson	Evans Ford, Kinston
[illegible]	Capitol Dodge
[illegible]	Charlotte Dealer Assoc.
[illegible]	Wade Ford Inc
Doug Wilkinson	Wilkinson Cadillac, Sanford
Earl Timmons	Earl Timmons Ford
Bill Smith	Cape Fear Ford

VISITOR REGISTRATION SHEET

JUDICIARY I — **August 7, 2001**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Kaylor	Dick Kaylor Pont. GMC + Dodge
TOBY WELLS	Toby Wells Pont. Buick, GMC, LLC
DON BULLUCK JR	Don Bullock Chevrolet Cadillac Inc
DAVID BRYAN	NCADA - Bryan Pont-CAD - Fayetteville, NC
Sunny Johnson Lewis	Johnson Lexus - Wake Co. Auto Dealers Assoc.
Paul White	Universal Chevrolet Company Charlotte
John Hecke Anderson Jr.	Smith Anderson Law Firm
Kelly Podger	Smith Anderson Law Firm
Tommy Hankins	Lobbyist
Phyllis Jeffreys	D+J Automotive, Louisburg
James P. Barber	Barber Chevrolet Oldsmobile
DAVID WESTCOTT	Westcott automotive
HUNTER GALLOWAY	Galloway Buick Company
HAROLD B. WELLS, SR	Wells Chrysler Dodge Jeep, Inc.
Lori Ann Harris	LA Harris & Assoc
Bobby H. Barbee	N.C. House Rep.
Jim Nunn	NCADA
Ralph	NCADA
David Parker	NCADA
SAM JOHNSON	ATSY
Sarry Beverly	LB&A
Sarah Blazewicz	NCADA
VERNON SMALL	Morehead City Ford, Inc

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 470

Commerce Committee Substitute Adopted 4/25/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-PCS9309-SG-29

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent

jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before

the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, 'mediation' means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable

for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to

remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."

SECTION 2.1. G.S. 20-305(30), as amended by Section 2 of this act, reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the

price charged to its franchised dealers located in this state in a manner which would violate this subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2(b) reads as rewritten:

"(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes,~~ trailers or semitrailers."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.**

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State has violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this

subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or dealer:

a. Upon unreasonable and unduly onerous terms or conditions;

b. When the cost of the signage or its installation or maintenance would be unreasonable in light of the franchised new motor vehicle dealer's reasonably anticipated sales volume of new

motor vehicles manufactured or distributed by the manufacturer or current market or economic conditions;

c. If the manufacturer's signage requirements are inconsistent with the signage requirements of one or more other manufacturers whose line makes of new motor vehicles are sold at the same facility;

d. If installation of the additional signage would require removal or relocation of any of the franchised new motor vehicle dealer's existing signs displaying the dealership's name or the name of other line makes of new motor vehicles sold at the same facility; or

e. If installation of the additional signage would violate local signage or zoning laws to which the franchised new motor vehicle dealer is subject.

Any term, provision or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2.1 of this act becomes effective March 1, 2003. All other sections of this act are effective when they become law.

ATTACHMENT IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-34 [v.2]

Date Aug. 7 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-24

Representative

moves to amend the bill on page 8, line 21, through page 9, line 2, by rewriting the lines to read:

"(d) Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT V

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-72 [v.4]

Date Aug. 7 ,2001

Comm. Sub. [YES]
Amends Title [NO]
S470-CSSG-29

Representative

moves to amend the bill on page 5, lines 4 through 15, by rewriting the lines to read:

"In the event that ~~at the time of the ratification of this act~~ as of January 1, 2001, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy or promotional or incentive program or other benefit, including financial incentives, which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, ~~or a program or policy similar thereto implemented after the effective date of this act,~~ including amendments to that program or policy that are consistent with the purpose and provisions of that program or policy as it existed on July 1, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State. ~~State until December 31, 2002.~~ Any manufacturer shall be required to pay or otherwise compensate any ~~franchise~~ franchised dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.'"; and,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 470

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

S470-ASG-72 [v.4]

on page 6, line 41, through page 7, line 10, by rewriting the lines to read:

"In the event that as of January 1, 2001, a manufacturer was operating a program or had in effect a policy or promotional or incentive program or other benefit, including financial incentives, which would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of that program or policy as it existed on July 1, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State. Any manufacturer shall be required to pay or otherwise compensate any franchised dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."; and,

on page 10, line 23, by rewriting the line to read:

SECTION 8. Section 2.1 of this act becomes effective when this act becomes law and is repealed effective July 31, 2003. All".

SIGNED _____
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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 470 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE 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

S D

SENATE BILL 470
Commerce Committee Substitute Adopted 4/25/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S470-PCS9332-SG-34

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.**

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, prior written notice is required for the following charges or debits: advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement, or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars ($10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent

jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

(1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

(2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before

the Commissioner or civil action shall be tolled during the pendency of the mediation.

(3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a Judge of the General Court of Justice.

(4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.

(5) In this subsection, 'mediation' means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.

(6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

(7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a fifty-fifty basis. The Commissioner is not liable

for the compensation paid or to be paid a mediator employed pursuant to this subsection.

(8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.

(9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence."

SECTION 2. G.S. 20-305(30) reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to

remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that ~~at the time of the ratification of this act~~ as of October 1, 1999, a manufacturer ~~is currently~~ was operating a program or ~~has~~ had in effect a policy that varied the price charged to its franchised dealers located in this state in a manner which would violate this ~~subdivision after October 1, 1999,~~ subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, ~~2002.~~ 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy."

SECTION 2.1. G.S. 20-305(30), as amended by Section 2 of this act, reads as rewritten:

"(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, ~~or upon~~ the dealer's participation in training programs sponsored, endorsed, or recommended by the ~~manufacturer.~~ manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or ~~incentives.~~ incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program or had in effect a policy that varied the

price charged to its franchised dealers located in this state in a manner which would violate this subdivision, it shall be lawful for that program or policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 2004. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch."

SECTION 3. G.S. 20-305.2 reads as rewritten:

"**§ 20-305.2. Unfair methods of competition.**

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit:

...

(7) The ownership, operation, or control of a dealership that sells primarily recreation vehicles as defined in G.S. 20-4.01(32a) by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001.

(b) This section shall not apply to manufacturers or distributors of ~~trailers, motor homes, or semitrailers.~~trailers or semitrailers that are not recreation vehicles as defined in G.S. 20-4.01(32a)."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-305.6. Unlawful for manufacturers to unfairly discriminate among dealers.**

Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to do any of the following:

(1) Discriminate against any similarly situated franchised new motor vehicle dealers in this State.

(2) Unfairly discriminate against franchised new motor vehicle dealers located in this State who have dualed facilities at which the vehicles distributed by the manufacturer, factory branch, distributor, or

distributor branch are sold or serviced with one or more other line makes of vehicles.

(3) Unfairly discriminate against one of its franchised new motor vehicle dealers in this State with respect to any aspect of the franchise agreement.

(4) Use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section shall not limit the right of the financial services or leasing company to engage in business practices in accordance with the trade."

SECTION 5. G.S. 20-308.1 reads as rewritten:

"**§ 20-308.1. Civil actions for violations.**

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award.

(b) Where the violation of a provision of this Article can be shown to be willful, ~~malicious~~ malicious, or wanton, or if continued multiple violations of a provision or provisions of this Article occur, the court may award punitive damages, attorneys' fees and costs in addition to any other damages under this Article.

(c) A new motor vehicle dealer, if he has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this Article by a manufacturer or distributor may have the effect of causing ~~such~~ a loss of money or property.

(d) ~~Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties.~~ Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new motor vehicle dealers located within North Carolina, and which represents the collective interests of its members, shall have standing to file a petition before the Commissioner or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief. Prior to

bringing an action, the association and manufacturer, factory branch, distributor, or distributor branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more manufacturers, factory branches, distributors, or distributor branches doing business in this State have violated any of the provisions of this Article, or for the determination of any rights created or defined by this Article, so long as the association alleges an injury to the collective interest of its members cognizable under this section. A cognizable injury to the collective interest of the members of the association shall be deemed to occur if a manufacturer, factory branch, distributor, or distributor branch doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding franchises with that manufacturer, factory branch, distributor, or distributor branch in this State. With respect to any administrative or civil action filed by an association pursuant to this subsection, the relief granted shall be limited to declaratory and injunctive relief and in no event shall the Commissioner or court enter an award of monetary damages."

SECTION 6. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's market. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised

new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests.

(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable and onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

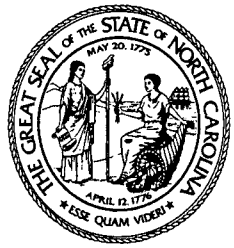
SECTION 7. If any clause or provision contained in this act shall be determined to be unconstitutional or unenforceable, that unconstitutionality or unenforceability shall not affect the validity of all remaining clauses or provisions not specifically determined to be unconstitutional or unenforceable.

SECTION 8. Section 2.1 of this act becomes effective March 1, 2003. All other sections of this act are effective when they become law.

2002

HOUSE
JUDICIARY I

MINUTES



House Judiciary I

Representative Joe Hackney
Chairman

Representative Dan Blue, Vice Chairman
Representative Martin Nesbitt, Vice Chairman

2002 Short Session

Emily Reynolds Freeman
Clerk

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY I COMMITTEE
2001 – 2002 SESSION



Rep. Hackney
Chair



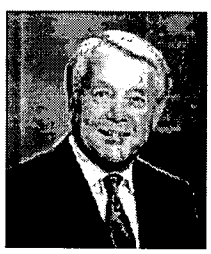
Rep. Blue
Vice-Chair



Rep. Nesbitt
Vice-Chair



Rep. Alexander



Rep. Arnold



Rep. Blust



Rep. Boyd-McIntyre



Rep. Clary



Rep. Gray



Rep. Insko



Rep. Redwine



Rep. Sutton



Rep. Thompson



Rep. Walker

HOUSE JUDICIARY I COMMITTEE
1999-2000 SESSION

MEMBERSHIP

NAME	OFFICE	TELEPHONE	LEGISLATIVE ASSISTANT
REPRESENTATIVE JOE HACKNEY, CHAIRMAN	2207	733-5752	EMILY REYNOLDS FREEMAN
REPRESENTATIVE DAN BLUE, VICE CHAIRMAN	1227	715-2528	LIN THREAT
REPRESENTATIVE MARTIN NESBITT, VICE CHAIRMAN	420	715-3001	JAN LEE
REPRESENTATIVE MARTHA ALEXANDER	2208	733-5807	ANN FAUST
REPRESENTATIVE GENE ARNOLD	604	733-5802	MARY HAYES
REPRESENTATIVE JOHN BLUST	1420	733-7208	BETTY CHILDRESS
REPRESENTATIVE FLOSSIE BOYD-MCINTYRE	507	733-5905	MIA BAILEY
REPRESENTATIVE DEBBIE CLARY	1211	733-5654	ELENA ASKEY
REPRESENTATIVE LYONS GRAY	533	733-5820	CINDY BROOKS
REPRESENTATIVE VERLA INSKO	2121	733-7208	LINDA MCCRODDEN
REPRESENTATIVE DAVID REDWINE	635	733-5829	NANCY BRANTLEY
REPRESENTATIVE RONNIE SUTTON	1321	715-0875	JUANITA COLEY
REPRESENTATIVE GREGG THOMPSON	1002	733-5828	EDNA SYKES
REPRESENTATIVE TRACY WALKER	1111	733-5935	BARBARA POWELL

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	7/2	7/9	7/16	7/23	7/30	8/14	8/20	8/27	9/4	10/3
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Blue, Vice-Chairman										
Representative Nesbitt, Vice-Chairman	✓	✓	✓	✓		✓	✓			
Representative Alexander	✓	✓	✓	✓	✓		✓	✓	✓	
Representative Arnold	✓			✓		✓	✓	✓		
Representative Blust	✓	✓		✓	✓	✓				
Representative Boyd-McIntyre					✓					
Representative Clary	✓	✓				✓			✓	
Representative Gray										
Representative Insko	✓	✓	✓	✓	✓	✓		✓	✓	
Representative Redwine						✓			✓	
Representative Sutton	✓	✓	✓	✓	✓	✓	✓	✓		
Representative Thompson	✓									
Representative Walker	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Representative Baddour, Ex-officio										
Representative Cunningham, Ex-officio								✓		
Representative Dedmon, Ex-officio										
Representative Earle, Ex-officio										

Meeting around desk in Chamber — Quorum was present

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0140=	Sutton	RACIAL JUSTICE ACT.	*HF	Postponed Indefinitely	02-15-01	04-24-01
H0141=	Sutton	NO DEATH PENALTY/ MENTALLY RETARDED.	H	Ref To Com On Judiciary I	02-15-01	
H0142=	Sutton	AMEND MARRIAGE STATUTES.	*HR	Ch. SL 2001-62	02-15-01	03-26-01
H0183	Redwine	MARRIAGE BY DISTRICT COURT JUDGE.	*HR	Ch. SL 2001-14	02-21-01	03-05-01
H0183	Redwine	MARRIAGE BY DISTRICT COURT JUDGE.	*HR	Ch. SL 2001-14	03-12-01	03-19-01
H0196	Morgan	BID LAW FLEX./ PINEHURST/ELIZABETH CITY.	*HR	Ch. SL 2001-66	02-21-01	03-22-01
H0218=	Hill	INJURY TO COMMODITIES OR PRODUCTION SYSTEMS.	*HR	Ch. SL 2001-290	04-19-01	04-25-01
H0320=	Weiss	SAFE STORAGE OF FIREARMS.	*HF	Failed 2nd Reading	02-28-01	04-23-01
H0342	Redwine	ESC RECORDS/EVIDENCE	HR	Ch. SL 2001-115	03-01-01	03-13-01
H0343	Redwine	REMOVE EMPLOYMENT SECURITY SUNSETS.	*HR	Ch. SL 2001-251	03-01-01	03-20-01
H0344	Redwine	DOMESTIC EMPLOYER WAGE REPORTS.	*HR	Ch. SL 2001-207	03-01-01	03-13-01
H0383=	Nesbitt	LOCAL GOVERNMENT TORT LIABILITY.	*H	Re-ref Com On Judiciary I	03-01-01	04-25-01
H0383=	Nesbitt	LOCAL GOVERNMENT TORT LIABILITY.	*H	Re-ref Com On Judiciary I	04-26-01	
H0451=	Rogers	AMEND NC EMERGENCY MANAGEMENT LAWS.	H	Ref To Com On Judiciary I	03-01-01	
H0514	Grady	RECORD CLOSED SESSIONS.	*HF	Failed 2nd Reading	03-07-01	04-23-01
H0526=	Hilton	ABORTION-PARENTAL CONSENT NOTARIZED.	H	Ref To Com On Judiciary I	03-08-01	
H0576	Hackney	ABOLISH ALIEN. AFFECT./CRIM. CONV.-2.	H	Re-ref Com On Judiciary II	03-13-01	04-10-01
H0631	Setzer	AUTOPSY PHOTOS NOT PUBLIC RECORD.	H	Ref To Com On Judiciary I	03-15-01	
H0643	Hackney	TESTIMONIAL PRIVILEGE FOR VIOLENCE VICTIMS.	*HR	Ch. SL 2001-277	03-15-01	04-18-01
$ H0649	**Baker**	**AUTHORIZE EMERGENCY APPROPRIATION.**	**H**	**Re-ref Com On Judiciary I**	**07-17-01**	
H0665=	Hackney	EXTEND LIMITATIONS FOR SOME INTENTIONAL TORTS.	HR	Ch. SL 2001-175	03-19-01	04-03-01
H0666	Crawford, J.	HALIFAX COUNTY AMBULANCE SERVICES.	H	Ref To Com On State and Local Government	04-03-01	04-10-01
H0676	Eddins	VICTIMS' RIGHTS PROVISIONS.	H	Ref To Com On Judiciary I	03-19-01	
H0728	Capps	DISPLAY OF AMERICAN FLAG.	*H	Re-ref Com On Judiciary I	10-29-01	
H0747	Redwine	MAKE ESC SURTAX PERMANENT.	H	Ref To Com On Judiciary I	03-22-01	
H0792	Starnes	COUNTY-WIDE ZONING/ ETJ.	H	Ref To Com On Judiciary I	03-26-01	
H0793	Starnes	INDECENT BEHAVIOR & PHOTOGRAPHY BETWEEN	*H	Ref To Com On Judiciary II	03-26-01	04-25-01

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2001-2002 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		MINORS.				
H0794	Starnes	CALDWELL/DISCHARGE OF FIREARMS.	HR	Ch. SL 2001-67	03-26-01	04-03-01
H0798	Eddins	NO PROFIT FROM CRIME.	H	Ref To Com On Judiciary I	03-26-01	
H0819	Goodwin	ROCKINGHAM CHARTER AMENDMENTS.	*HR	Ch. SL 2001-68	03-27-01	04-05-01
H0837	Alexander	CIVIL PENALTY AUTHORITY/PUBLIC HEALTH VIOLATIONS	HR	Ch. SL 2001-120	04-16-01	04-18-01
H0859	Shubert	REPEAT MISD. LARCENY OR SHOPLIFTING IS FELONY.	H	Ref To Com On Judiciary I	03-29-01	
H0884	Hackney	INNOCENCE PROTECTION ACT.	*HR	Ch. SL 2001-282	03-29-01	04-19-01
H0898	Hensley	STATE EMPLOYEE FEDERAL REMEDY RESTORATION ACT.	*HR	Ch. SL 2001-467	03-29-01	04-18-01
H0929	Wainwright	MINNESOTT BEACH ETJ.	HR	Ch. SL 2001-134	03-29-01	04-24-01
H0932=	Insko	ORANGE OPEN BURNING REGULATION.	H	Ref To Com On Judiciary I	03-29-01	
H0941	Insko	COUNTY ANTIDISCRIMINATION ORDINANCES.	*H	Ref To Com On Judiciary II	04-02-01	04-25-01
H0983	Culp	LMT LIABILITY/ LANDOWNER OF WATERSHED PROPERTIES.	HR	Ch. SL 2001-272	04-05-01	04-19-01
H1012=	Morris	PHYSICIAN ASSISTED SUICIDE UNLAWFUL.	H	Ref To Com On Judiciary I	04-09-01	
H1083	Hackney	SECURE CUSTODY OF JUVENILES USING WEAPONS.	*HR	Ch. SL 2001-158	04-11-01	04-18-01
H1084	Hackney	EQUITABLE DISTRIBUTION CLARIFICATION.	*HR	Ch. SL 2001-364	04-11-01	04-17-01
H1085	Hackney	PROBATION REVOCATION TO COURT OF APPEALS.	*H	Ref To Com On Judiciary I	04-11-01	04-17-01
H1094=	Blue	CORRECT TERM OF JUDGESHIP.	H	Re-ref Com On Judiciary I	04-11-01	04-18-01
H1094=	Blue	CORRECT TERM OF JUDGESHIP.	H	Re-ref Com On Judiciary I	04-26-01	
H1097	Ellis	SEX OFFENSES/AMEND PLEA BARGAIN LAWS.	H	Ref To Com On Judiciary I	04-11-01	
$ H1116	**Hackney**	**DEATH PENALTY MORATORIUM.**	***H**	**Re-ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**12-06-01**	
H1127=	Blust	DNA SAMPLE/FELONY CONVICTIONS & INSANE DEFENSE.	H	Ref To Com On Judiciary I	04-12-01	
H1139	Hackney	APPEALS FROM CONTEMPT.	H	Ref To Com On Judiciary I	04-12-01	04-17-01
H1141	Sexton	CARTWAYS.	H	Ref To Com On Judiciary I	04-12-01	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1154	Holliman	CRIME VICTIMS' RIGHTS ACT AMENDMENTS.	*HR	Ch. SL 2001-433	04-12-01	04-25-01
H1177=	Blust	REQUIRE EXPERIENCE FOR DEATH PENALTY CASES.	H	Ref To Com On Judiciary I	04-12-01	
H1183=	Blue	CORRECT TERM OF JUDGESHIP.	H	Ref To Com On Judiciary I	04-12-01	
H1217	Hackney	NOTIFY DWI LIENHOLDERS IMMEDIATELY.	*HR	Ch. SL 2001-362	04-12-01	04-25-01
H1224=	Nesbitt	CONSTRUCTION CONTRACTS/RETAINAGE REFORM.	H	Ref To Com On Judiciary I	04-12-01	
H1225	Nesbitt	OPEN MEETINGS PENDING LITIGATION.	H	Ref To Com On Judiciary I	04-12-01	
H1260	Davis	PARENTAL RIGHTS & CHILD PROTECTION ACT.	H	Ref To Com On Judiciary I	04-12-01	
H1276	Nesbitt	CLOSE INCEST LOOPHOLE TO PROTECT MINORS.	*HR	Ch. SL 2002-119	04-12-01	04-19-01
H1293	Blust	DISTRICT COURT DISTRICT 18 JUDGES' RESIDENCY.	H	Ref To Com On Judiciary I	04-12-01	
H1321	Nesbitt	IMMUNITY FOR CITY/ PUBLIC SAFETY OFFICERS.	H	Ref To Com On Judiciary I	04-12-01	
H1351	Harrington	TWO STRIKES--YOU'RE OUT.	H	Ref To Com On Judiciary I	04-12-01	
H1519=		MOTOR CARRIER SAFETY AMENDMENTS.	*HR	Ch. SL 2002-152	06-05-02	07-23-02
H1546=		LEVEL 2 GDL RESTRICTION - C.F.T.F.	*HR	Ch. SL 2002-73	06-06-02	07-09-02
H1553=		WAIVE JURY TRIAL/ CONSTITUTIONAL AMENDMENT.	H	Ref To Com On Judiciary I	06-06-02	
H1562		"NO HUSH MONEY/ SEVERANCE PAY".	H	Ref To Com On Judiciary I	06-06-02	
H1785	Decker	NC CAN/AMBER ALERT - 2.	*H	Ref To Com On Judiciary I	08-28-02	09-04-02
$ S0109=	**Robert G. Shaw**	**REQUIRE EXPERIENCE FOR DEATH PENALTY CASES.**	***HR**	**Ch. SL 2001-392**	**04-26-01**	**08-07-01**
S0173=	Frank W. Ballanc	NO DEATH PENALTY/ MENTALLY RETARDED.	*HR	Ch. SL 2001-346	04-25-01	07-04-01
S0195	Tony Rand	CRIMINAL RECORD CHECKS FOR NURSES.	*HR	Ch. SL 2001-371	03-20-01	05-07-01
S0262	Tony Rand	EXPUNGE IMPROPER CRIM. CHARGE/IDENTITY FRAUD.	*HR	Ch. SL 2001-108	04-24-01	05-02-01
S0300=	T. LaFontine Odo	AMEND NC EMERGENCY MANAGEMENT LAWS.	*HR	Ch. SL 2001-214	04-25-01	05-16-01
S0310	David W. Hoyle	UNIFORM SECURITIES REGULATION.	*HR	Ch. SL 2001-126	04-25-01	05-07-01
S0336	Fletcher L. Hart	VARIOUS COUNTIES AMBULANCE SERVICE.	*HR	Ch. SL 2001-106	03-20-01	05-07-01
S0390	James Forrester	PHYSICIAN-ASSISTED SUICIDE/EDUCATION &	*H	Re-ref Com On Judiciary I	06-04-01	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CRIME.				
[redacted]402	Hamilton C. Hort	SECRET PEEPING CHANGES.	*H	Conf Com Appointed	04-23-01	07-30-02
S0470=	David W. Hoyle	AMEND MV DEALER FRANCHISE LAWS.	*HR	Ch. SL 2001-510	04-26-01	08-14-01
S0476	Kay R. Hagan	REALIGNMENT OF VAR. SUP. CT. JUDGE DISTS.	*HR	Ch. SL 2001-333	04-26-01	07-04-01
S0587	Jeanne H. Lucas	DURHAM HIST.PROP./ TAKING OF DEER.	*HR	Ch. SL 2001-382	04-26-01	05-07-01
S0626=	Daniel G. Clodfe	DOMESTIC VIOLENCE FATALITY REVIEW TEAM.	*HF	Postponed Indefinitely	05-02-01	05-16-01
S0633=	Daniel G. Clodfe	BUILDING CODE PILOT PROGRAM.	*HR	Ch. SL 2001-372	05-09-01	07-26-01
S0662=	Eleanor Kinnaird	ORANGE OPEN BURNING REGULATION.	HR	Ch. SL 2002-117	04-17-01	08-20-02
S0712	Tony Rand	DISTRICT JUDGE 8-YEAR TERMS.	*H	Placed On Cal For 8/30/2002	07-31-02	08-27-02
S0719	Wib Gulley	TTA EMINENT DOMAIN.	*HR	Ch. SL 2001-239	05-15-01	05-22-01
S0719	Wib Gulley	TTA EMINENT DOMAIN.	*HR	Ch. SL 2001-239	05-29-01	06-04-01
S0739	Charles Carter	PSYCH. ASSOC./ CLINICAL SOCIAL WORKER PRIVILEGE.	*HR	Ch. SL 2001-152	04-12-01	05-15-01
S0742=	Brad Miller	LOCAL GOVERNMENT TORT LIABILITY.	*H	Ref To Com On Judiciary I	04-30-01	
S0759	Wib Gulley	RAIL TRANSPORTATION LIABILITY.	*HR	Ch. SL 2002-78	04-26-01	05-22-01
S0774	Tony Rand	PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY.	*HR	Ch. SL 2001-473	04-26-01	05-08-01
[redacted]774	Tony Rand	PUBLIC ENTERPRISE CUSTOMER BILLING PRIVACY.	*HR	Ch. SL 2001-473	05-17-01	05-29-01
S0819	Tony Rand	CERTAIN PROB. VIOL. TO CT. OF APPEALS.	H	Re-ref to the Com on Judiciary I and, if favorable, to the Com on Rules, Calendar, and Operations of the House	05-09-01	
S0825	Tony Rand	STATE HEALTH PLAN CONTRACT/EXEMPT APA.	*HR	Ch. SL 2001-192	04-25-01	05-02-01
S0910	Tony Rand	CRIME TO DEFRAUD DRUG TEST.	*H	Pres. To Gov. 10/ 4/2002	04-23-01	05-08-01
S0931	Tony Rand	CAPITAL CASE/JUDGE OVERSEE DISCOVERY.	*HF	Postponed Indefinitely	04-26-01	05-08-01
S0936	Allen H. Wellons	SEX OFFENDER REG/ CONFORM W/FEDERAL LAW.	*HR	Ch. SL 2001-373	04-19-01	05-22-01
S0936	Allen H. Wellons	SEX OFFENDER REG/ CONFORM W/FEDERAL LAW.	*HR	Ch. SL 2001-373	06-06-01	07-24-01
S0951	T. LaFontine Odo	PREVENT UNNECESSARY FILING OF BRIEFS.	*HR	Ch. SL 2001-388	04-24-01	07-31-01
S0961	Frank W. Ballanc	DRIVING WHILE LICENSE REVOKED FLEXIBILITY.	*H	Ref To Com On Judiciary I	04-26-01	
S1004	Tony Rand	INTERFERE W/ EMERGENCY	*HR	Ch. SL 2001-148	04-23-01	05-14-01

'$' 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
		COMMUNICATION.				
038	David W. Hoyle	PUBLIC RIGHT-OF-WAY DECLARATION.	*HR	Ch. SL 2001-501	04-30-01	10-04-01
S1218		REVENUE LAWS ENFORCEMENT ENHANCEMENTS.	HR	Ch. SL 2002-106	07-29-02	08-14-02
S1392=		MECKLENBURG UNCLAIMED PROPERTY.	*HR	Ch. SL 2002-92	08-08-02	08-20-02

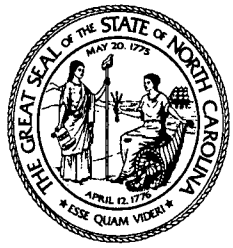
'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

Dates Bills Were Considered

2002 Short Session

House Bill 1519	July 23, 2002
House Bill 1546	July 2 and July 9, 2002
House Bill 1553	July 16, 2002
House Bill 1785	September 4, 2002
Senate Bill 402	July 23 and July 30, 2002
Senate Bill 662	August 20, 2002
Senate Bill 712	August 20 and 27, 2002
Senate Bill 1218	August 14, 2002
Senate Bill 1392	August 20, 2002

Indefinite Postponements October 3, 2002



House Judiciary I

2002 Short Session

MINUTES

House Judiciary I Committee

July 2, 2002

Minutes

The House Judiciary I Committee met on Tuesday, July 2, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Clary, Insko, Nesbitt, Sutton, Thompson and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney welcomed the members to the first meeting of the Short Session and introduced the pages.

Chairman Hackney announced that House Bill 1519, AN ACT TO MAKE CHANGES TO THE LAWS AFFECTING MOTOR CARRIER SAFETY, had been removed from the agenda at the request of the sponsor.

Representative Clary was recognized for an explanation of House Bill 1546, AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES, (Attachment III). She distributed a proposed committee substitute (Attachment IV).

Representative Arnold moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the bill. Ms. Sitze said that the bill would add an additional restriction to Level 2 drivers with limited provisional licenses. The bill would provide that a Level 2 driver who is driving without a supervising driver may not have more than one passenger under 21 in the car. She said that the limit does not apply to passengers under 21 who are members of the driver's immediate family whose primary residence is the same household as the license holder. However, if a family member under 21 is a passenger, no additional passengers under 21 may be in the vehicle.

A bill analysis, prepared by Ms. Sitze, was distributed, (Attachment V).

Dr. Robert Foss, Highway Safety Center, Chapel Hill, was recognized to comment on the graduated driver licensing system and to encourage the committee to pass the proposed legislation. A handout was provided to the members, (Attachment VI).

Committee discussion followed.

Representative Nesbitt requested additional data regarding the number of driver deaths.

Ms. Paula Wolf, The Covenant with North Carolina's Children, spoke in support of the bill

Ms. Jane Pinsky, AAA Carolinas, spoke in support of the bill.

Ms. Mary Katherine Hackney, intern for Representative Hackney was recognized and related experiences she encountered when she was a relatively new driver. She spoke in support of the bill.

Representative Clary reminded the committee that the bill is aimed at the 11 % of the young drivers who are packing the cars with several people.

No action was taken on the bill.

The meeting adjourned at 10:23 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 2, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1519 – MOTOR CARRIER SAFETY AMENDMENTS
REPRESENTATIVE JIM CRAWFORD

HOUSE BILL 1546 – LEVEL 2 GDL RESTRICTION
REPRESENTATIVE DEBBIE CLARY

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 2, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Okun	NASW Affiliate
Pam Deardorff	YAYD
Larry [illegible]	Council For Children, Charlotte
Gene Causby	NCMA
Dick Cheney	Washington DC
[illegible]	The Capitol Group
[illegible]	NC State Water
April Bethea	News & Observer
Matt Osborne	AOC
Jim Lowry	NC Utility Contractors Assn
John McKay	Government Affairs
[illegible]	AAA Carolinas
Shayna Waites	intern
Shannon E. Joyner	Covenant with NC's Children
Paula A. Self	" "
Wayne Finch	NC DMV
Dan Rangeland	NCPTA
Claire Flye	Mast Drug Intern

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 1546

Short Title:	Level 2 GDL Restriction - C.F.T.F.	(Public)
Sponsors:	Representatives Clary; Bowie, Brubaker, Cox, M. Crawford, Earle, Easterling, Harrington, Hunter, Insko, Johnson, Luebke, Preston, Shubert, and Weiss.	
Referred to:	Judiciary I.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES.

Whereas, studies have shown that the system of Graduated Drivers Licenses instituted in North Carolina on December 1, 1997, has reduced the number of accidents involving young drivers; and

Whereas, statistics also indicate that when the supervising driver is not present the risk of accident increases with the presence of passengers who may distract the license holder; and

Whereas, the studies show that the risk of accident increases with the number of passengers in the vehicle driven by the young graduated license holder; and

Whereas, the General Assembly finds that limiting the number of passengers to reduce the likelihood of a young driver having an accident is in the public interest; Now, therefore,

The General Assembly of North Carolina enacts:

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

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder ~~must~~ shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver ~~must~~ shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but ~~must~~ shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family and whose primary residence is the same household as the license holder. However, if a family member of the license holder who is younger than 21 years of age is a passenger in the vehicle, no passengers who are not members of the license holder's immediate family may be in the vehicle.

~~(4)~~(5) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1546
PROPOSED COMMITTEE SUBSTITUTE H1546-CSSA-40 [v.2]

7/2/2002 9:12:37 AM

Short Title: Level 2 GDL Restriction - C.F.T.F. (Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES.

Whereas, studies have shown that the system of Graduated Drivers Licenses instituted in North Carolina on December 1, 1997, has reduced the number of accidents involving young drivers; and

Whereas, statistics also indicate that when the supervising driver is not present the risk of accident increases with the presence of passengers who may distract the license holder; and

Whereas, the studies show that the risk of accident increases with the number of passengers in the vehicle driven by the young graduated license holder; and

Whereas, the General Assembly finds that limiting the number of passengers to reduce the likelihood of a young driver having an accident is in the public interest; Now, therefore,

The General Assembly of North Carolina enacts:

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

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder ~~must~~ shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver ~~must~~ shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but ~~must~~ shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family and whose primary residence is the same household as the license holder. However, if a family member of the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family, may be in the vehicle.

~~(4)~~(5) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion."

SECTION 2. This act becomes effective October 1, 2002, and applies to limited provisional licenses issued on or after that date.

HOUSE BILL 1546:
Level 2 GDL Restriction - C.F.T.F.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Clary
Date:	July 2, 2002	**Summary by:**	Susan L. Sitze
Version:	H1546-CSSA-40[v.2]		Committee Counsel

SUMMARY: ***House Bill 1546 provides certain occupancy restrictions for vehicles driven by Level 2 drivers with limited provisional licenses.***

CURRENT LAW: The "Graduated Drivers' License" statute, G.S. 20-11, requires a person under the age of 18 to go through 3 levels of driving privileges. Level 1 is required for 1 year, Level 2 for 6 months, and Level 3 is the final unrestricted license. G.S. 20-11(e) currently places the following restrictions on a Level 2 limited provisional license holder:

1) The license holder must be in possession of the license.

2) The license holder may drive without supervision from 5:00am to 9:00pm, to or from work, or to or from a volunteer fire department, rescue squad, or emergency medical service activity.

3) The license holder may drive with supervision at any time.

4) Every person occupying the vehicle must have a safety belt fastened.

BILL ANALYSIS: House Bill 1546 would add an additional restriction to the Level 2 limited provisional license holder. The bill would provide that when the Level 2 license holder is driving without a supervising driver, there may be no more than one passenger under the age of 21 in the vehicle. The limit does not apply to passengers who are members of the driver's immediate family and household, however, if a family member under the age of 21 is a passenger in the vehicle, no other passengers under the age of 21 who are not members of the immediate family may be in the vehicle.

This act becomes effective October 1, 2002, and applies to limited provisional licenses issued on or after that date.

BACKGROUND: This is a recommendation of the Child Fatality Task Force.

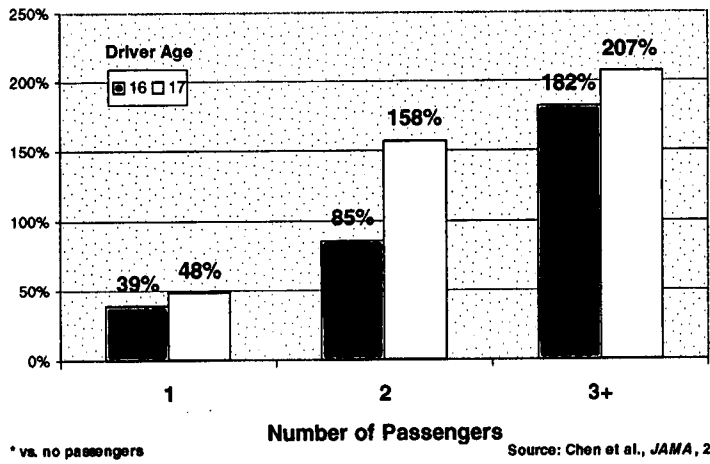
Would a Passenger Restriction Improve the North Carolina Graduated Driver Licensing System?

The North Carolina *Graduated Driver Licensing* (GDL) *system* for beginning drivers was implemented on December 1, 1997, becoming the second such system in the United States. Since that time, at least 32 other states and the District of Columbia have enacted GDL systems. In view of recent research findings, many of the newer GDL systems either prohibit or limit passengers riding with novice drivers.

❑ Passengers Increase Crash Risk for Young Drivers

- 19 states now include a restriction on carrying passengers for drivers with an intermediate license.
- Ten states prohibit any passengers while 6 allow only one passenger.
- Most of these restrictions apply during the first six months that unsupervised driving is permitted. This corresponds to the Level 2 license in North Carolina.

Increased Risk of Driver Death* by Number of Passengers and Driver Age, U.S., 1992 - 1997



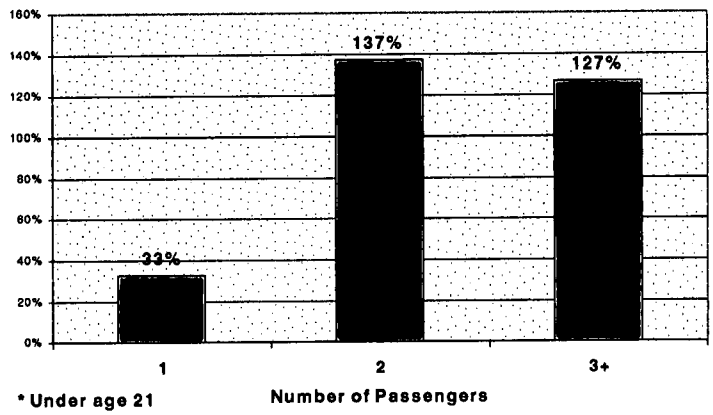
* vs. no passengers

Source: Chen et al., *JAMA*, 2000.

❑ Do passengers increase risks for drivers already in a GDL system?

- GDL has reduced beginning driver crashes dramatically. In view of this, are passengers still risky?
- The figure at right shows that *passengers do increase the risk* of a fatal or injury crash for NC drivers with a GDL Level 2 license.
- Although a single young passenger increases crash risk, multiple passengers are the major concern.

Increased Crash Risk for 16 & 17 Year-old NC Drivers with Level 2 License by Number of Young* Passengers



* Under age 21

❑ Conclusion

- Amending the North Carolina GDL system to include a limit on the number of passengers riding with a Level 2 driver should further reduce crashes among these drivers.
- Level 2 drivers should be limited to carrying one passenger younger than 21.

Issues Underlying Recommendation to Allow One Passenger

Studies that have examined the effect of specific numbers of passengers indicate that although a single passenger increases crash risk for 16 & 17 year-old drivers, the increase is not particularly great, especially in comparison with the dramatic effects of 2 or more passengers. Accordingly, **limiting novice drivers to one passenger may provide sufficient protection from passenger-related crash risks.**

Passenger restrictions are known to be **violated more often than nighttime restrictions**. A more restrictive passenger limit would likely be disregarded more often, which would dilute its effect. Only 11% of trips by Level 2 drivers in North Carolina involve more than one young (< 21) passenger. Thus, limiting Level 2 drivers to one passenger would not interfere with the large majority of trips, but would prohibit trips with the greatest risk.

A final consideration is **whether to exclude young family members** from a passenger restriction. Although there are occasions when a young, inexperienced driver needs to transport a sibling, there is no reason to believe that siblings are less likely to create distractions for the driver. Setting the limit at one passenger will allow novice drivers to transport a young family member if necessary. It seems unwise, however, to allow an inexperienced driver to carry more than one young family member. Not only would this create the high risk situation that a passenger restriction is designed to prevent, it would put at least 3 children of a single family in that risky situation.

Recommendation

It is recommended that the following provision be added to the restrictions that currently apply to drivers who possess a Level 2 license:

- **No more than one passenger under 21 years of age may ride in the vehicle unless the adult supervisor is also present in the vehicle.**

If there is a desire to exclude family members entirely from the limit on passengers, it is important that this exclusion not result in a situation where both family members and unrelated passengers are transported. Hence, wording like the following would be needed:

- *This limit does not apply to passengers who are members of the driver's immediate family and whose primary residence is the same household as that of the driver. However,*
  - *If a family member of the driver who is younger than 21 years of age is a passenger in the vehicle, no passengers who are not members of the driver's immediate family are allowed.*

House Judiciary I Committee

July 9, 2002

Minutes

The House Judiciary I Committee met on Tuesday, July 9, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Clary, Insko, Nesbitt, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The proposed committee substitute for House Bill 1546, AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES, (Attachment III). The bill was explained during the July 2, 2002 meeting of the committee.

The Chairman noted that a letter written by Dr. Robert Foss and addressed to Representative Nesbitt had been distributed to the members of the committee, (Attachment IV). Representative Nesbitt had requested additional information during the July 2, 2002 meeting ,and the letter was a response to the questions that had been raised at that time.

Sergeant Jeff Babb, State Highway Patrol, commented on inattentiveness of young drivers and spoke in support of the bill.

Senator Allran was recognized and commented briefly on the bill in the absence of Representative Clary who had been unavoidably detained.

Mr. Tom Bennett, Child Fatality Task Force, spoke in support of the bill and responded to questions.

Committee discussion followed.

Representative Sutton asked about the penalty for violation of the provisions of the bill.

Ms. Susan Sitze, Committee Counsel, said that there would be a six month extension of the driver level the offender was in at the time of the offense.

.....

Representative Blust spoke in support of the bill and moved a favorable report for the proposed committee substitute.

Ms. Paula Wolf, The Covenant with North Carolina's Children, spoke in support of the bill.

The motion for a favorable report was before the committee. Upon vote of the members, the proposed committee substitute received a favorable report, (Attachment V).

The meeting adjourned at 10:40 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 9, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1546 – LEVEL 2 GDL RESTRICTION
REPRESENTATIVE DEBBIE CLARY

VISITOR REGISTRATION SHEET

JUDICIARY I — **July 9, 2002**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Letitia Withrow	NC State Watch
Judy Arnold	DMV - New Bern Ave, Ral
Shadrow Matthews	"
April Bethea	News & Observer
Mary Robertson	AP
Barry Smith	Freedom Newspapers
Jane Binsky	AAA Carolinas
Shannon Fyfe	Covenant w/ NC's Children
Thomas V. Bennett	NCCFTF
Jennifer Jolie Whitside	NCCFTF
Pam Deardorff	NCCFTF

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1546
PROPOSED COMMITTEE SUBSTITUTE H1546-CSSA-40 [v.2]

7/2/2002 9:12:37 AM

Short Title: Level 2 GDL Restriction - C.F.T.F. (Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES.

Whereas, studies have shown that the system of Graduated Drivers Licenses instituted in North Carolina on December 1, 1997, has reduced the number of accidents involving young drivers; and

Whereas, statistics also indicate that when the supervising driver is not present the risk of accident increases with the presence of passengers who may distract the license holder; and

Whereas, the studies show that the risk of accident increases with the number of passengers in the vehicle driven by the young graduated license holder; and

Whereas, the General Assembly finds that limiting the number of passengers to reduce the likelihood of a young driver having an accident is in the public interest; Now, therefore,

The General Assembly of North Carolina enacts:

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

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder ~~must~~ shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver ~~must~~ shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but ~~must~~ shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family and whose primary residence is the same household as the license holder. However, if a family member of the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family, may be in the vehicle.

~~(4)~~(5) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion."

SECTION 2. This act becomes effective October 1, 2002, and applies to limited provisional licenses issued on or after that date.

July 3, 2002

Rep. Martin Nesbitt
420 Legislative Office Building
Raleigh, NC 27601

Dear Representative Nesbitt,

I am providing the following in response to your request for additional information about the number of motor vehicle crashes involving Level 2 drivers in North Carolina who were carrying multiple passengers.

In 2000, the most recent year for which we have been able to link crash data with licensing data, there were **8,253** crashes involving a driver with a Level 2 license; 778 of these crashes involved 2 young (under age 21) passengers and 388 involved 3 or more young passengers. As representative Clary mentioned, a relatively small *proportion* of all crashes (and trips) by level 2 drivers involve multiple passengers. Nonetheless, the actual *number* of crashes that occur is substantial (nearly 1,200 a year) and certainly merits an effort to reduce them. That, of course, is what the proposed change in the Level 2 license is intended to do.

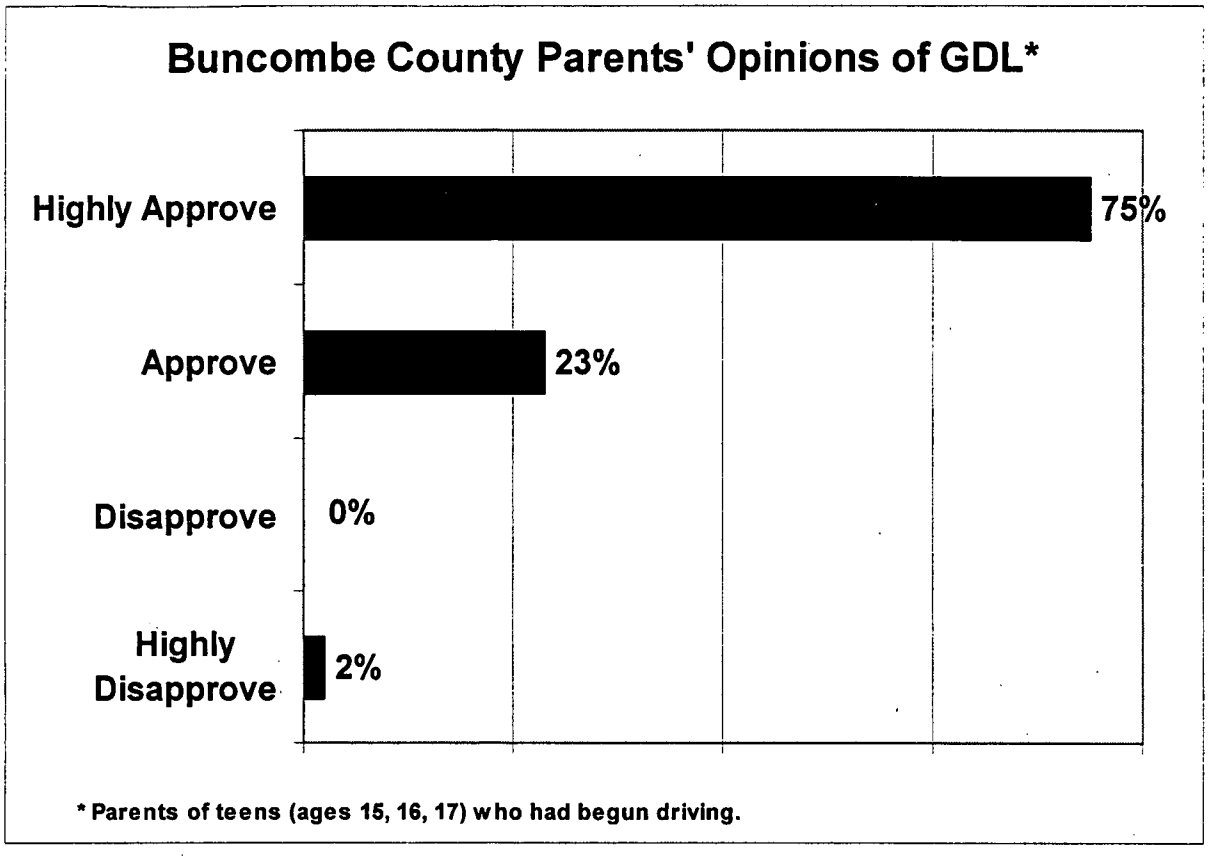
Among the young drivers in these crashes **3,917** were 17 years old, the remaining **4,336** were 16 year-old drivers. That is, a large number of those with Level 2 licenses are 17 year-old drivers. I believe this should help to address your concern that the proposed modification to the GDL system would only address the passenger risks for 16 year-olds, but not 17 year-olds.

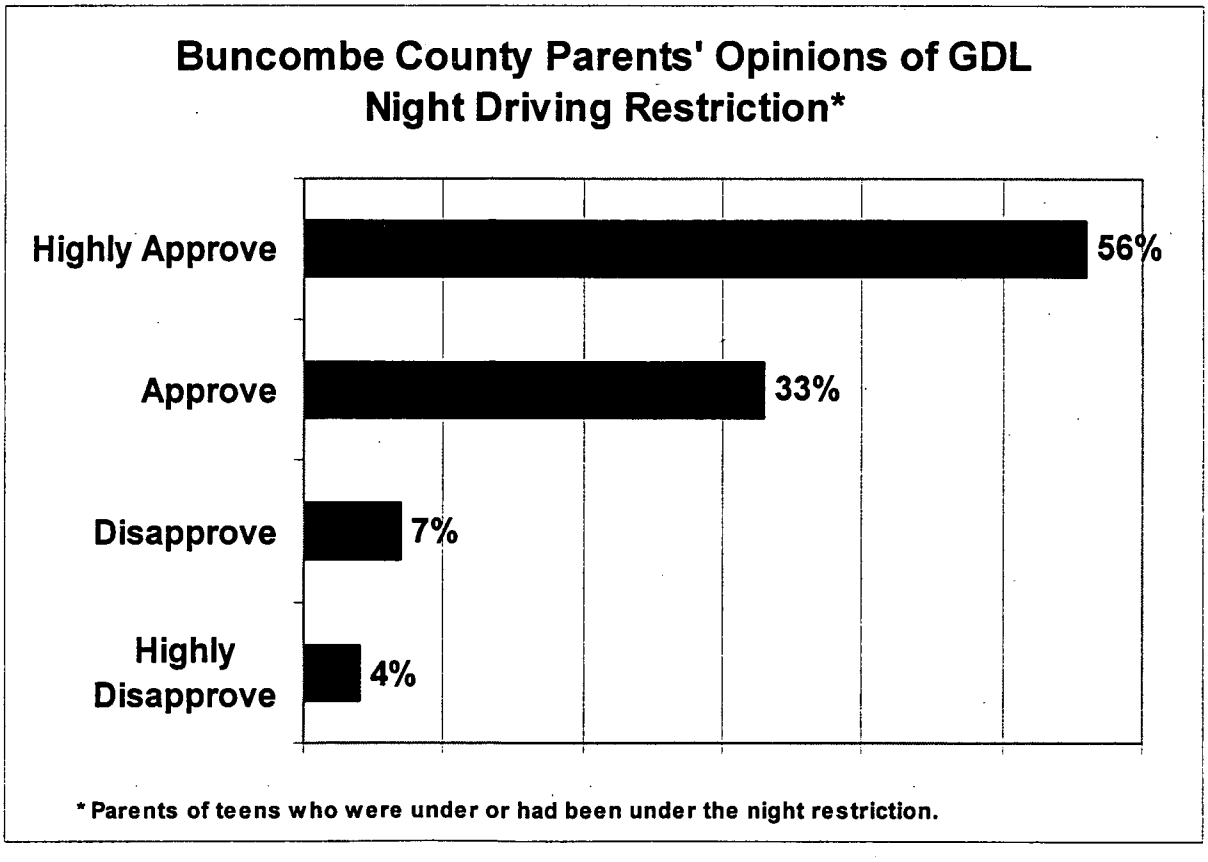
Regarding our discussion after the meeting about the fact that parents widely support Graduated Licensing, and the fact you had not heard much about this from your constituents, I investigated this a bit. We have interviewed about 2,600 parents about GDL the past few years. Just over 100 of those families were from Buncombe county. I looked at their answers to questions regarding support for graduated licensing and for the 9 p.m. - 5 a.m. driving restriction. I am including those for your information. As you can see, the parents in Buncombe county are overwhelmingly supportive of GDL in general and the night driving restriction in particular. It turns out that Buncombe county parents opinions about these issues are very similar to what we found in the rest of the state.

Finally, I wanted to address your point that it is important to consider the cost or "pain" of various actions to reduce the risk of injury. That consideration figured heavily into our examination of this issue and our recommendation for a restriction to one young passenger. Many states have included a much more invasive restriction, *prohibiting any passengers* riding with teens during their first 6 months of unsupervised driving. Although the data do show an increased risk for even one passenger, it was our opinion that a complete prohibition of passengers is simply too intrusive, especially since the big increase in risk comes with 2 or more passengers. Thus, your concerns about balancing inconvenience with potential savings were factored in to the recommendation that Representative Clary's bill entails.

Sincerely,

Robert Foss, Ph.D.
Research Scientist


Buncombe County Parents' Opinions of GDL*
Highly Approve
75%
Approve
23%
Disapprove
0%
Highly Disapprove
2%
* Parents of teens (ages 15, 16, 17) who had begun driving.


Buncombe County Parents' Opinions of GDL Night Driving Restriction*
Highly Approve
56%
Approve
33%
Disapprove
7%
Highly Disapprove
4%
* Parents of teens who were under or had been under the night restriction.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1546 A BILL TO BE ENTITLED AN ACT TO PROVIDE CERTAIN OCCUPANCY LIMITATIONS FOR VEHICLES DRIVEN BY LEVEL 2 DRIVERS WITH LIMITED PROVISIONAL LICENSES.

☐ 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 1546:
Level 2 GDL Restriction - C.F.T.F.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Clary
Date:	July 2, 2002	**Summary by:**	Susan L. Sitze
Version:	H1546-CSSA-40[v.2]		Committee Counsel

SUMMARY: ***House Bill 1546 provides certain occupancy restrictions for vehicles driven by Level 2 drivers with limited provisional licenses.***

CURRENT LAW: The "Graduated Drivers' License" statute, G.S. 20-11, requires a person under the age of 18 to go through 3 levels of driving privileges. Level 1 is required for 1 year, Level 2 for 6 months, and Level 3 is the final unrestricted license. G.S. 20-11(e) currently places the following restrictions on a Level 2 limited provisional license holder:

1) The license holder must be in possession of the license.

2) The license holder may drive without supervision from 5:00am to 9:00pm, to or from work, or to or from a volunteer fire department, rescue squad, or emergency medical service activity.

3) The license holder may drive with supervision at any time.

4) Every person occupying the vehicle must have a safety belt fastened.

BILL ANALYSIS: House Bill 1546 would add an additional restriction to the Level 2 limited provisional license holder. The bill would provide that when the Level 2 license holder is driving without a supervising driver, there may be no more than one passenger under the age of 21 in the vehicle. The limit does not apply to passengers who are members of the driver's immediate family and household, however, if a family member under the age of 21 is a passenger in the vehicle, no other passengers under the age of 21 who are not members of the immediate family may be in the vehicle.

This act becomes effective October 1, 2002, and applies to limited provisional licenses issued on or after that date.

BACKGROUND: This is a recommendation of the Child Fatality Task Force.

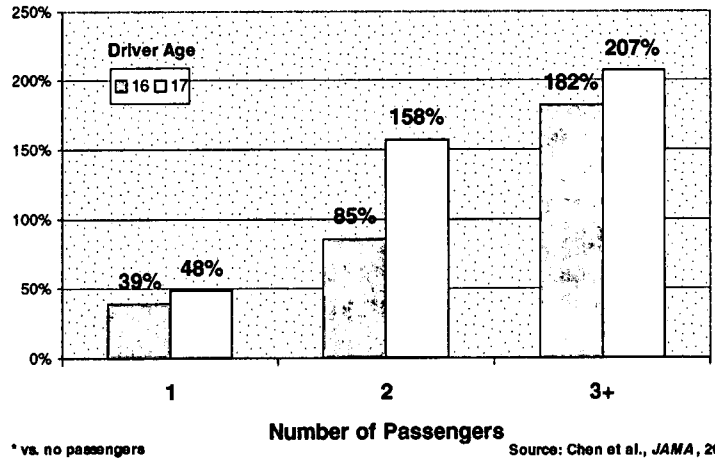
Would a Passenger Restriction Improve the North Carolina Graduated Driver Licensing System?

The North Carolina *Graduated Driver Licensing* (GDL) *system* for beginning drivers was implemented on December 1, 1997, becoming the second such system in the United States. Since that time, at least 32 other states and the District of Columbia have enacted GDL systems. In view of recent research findings, many of the newer GDL systems either prohibit or limit passengers riding with novice drivers.

❑ Passengers Increase Crash Risk for Young Drivers

- 19 states now include a restriction on carrying passengers for drivers with an intermediate license.
- Ten states prohibit any passengers while 6 allow only one passenger.
- Most of these restrictions apply during the first six months that unsupervised driving is permitted. This corresponds to the Level 2 license in North Carolina.

Increased Risk of Driver Death* by Number of Passengers and Driver Age, U.S., 1992 - 1997



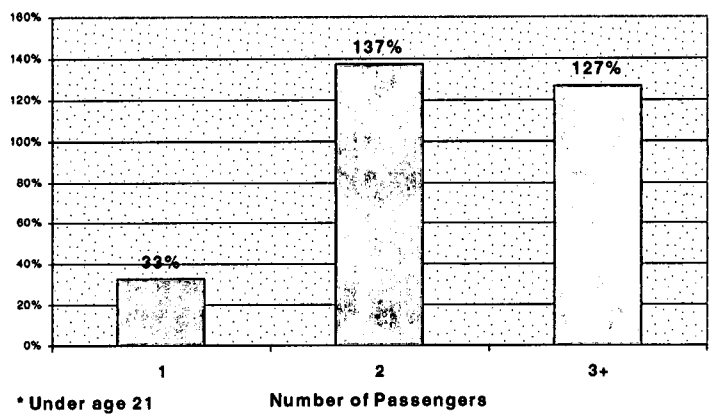
* vs. no passengers

Source: Chen et al., *JAMA*, 2000.

❑ Do passengers increase risks for drivers already in a GDL system?

- GDL has reduced beginning driver crashes dramatically. In view of this, are passengers still risky?
- The figure at right shows that *passengers do increase the risk* of a fatal or injury crash for NC drivers with a GDL Level 2 license.
- Although a single young passenger increases crash risk, multiple passengers are the major concern.

Increased Crash Risk for 16 & 17 Year-old NC Drivers with Level 2 License by Number of Young* Passengers



* Under age 21

❑ Conclusion

- Amending the North Carolina GDL system to include a limit on the number of passengers riding with a Level 2 driver should further reduce crashes among these drivers.
- Level 2 drivers should be limited to carrying one passenger younger than 21.

Issues Underlying Recommendation to Allow One Passenger

Studies that have examined the effect of specific numbers of passengers indicate that although a single passenger increases crash risk for 16 & 17 year-old drivers, the increase is not particularly great, especially in comparison with the dramatic effects of 2 or more passengers. Accordingly, **limiting novice drivers to one passenger may provide sufficient protection from passenger-related crash risks.**

Passenger restrictions are known to be **violated more often than nighttime restrictions**. A more restrictive passenger limit would likely be disregarded more often, which would dilute its effect. Only 11% of trips by Level 2 drivers in North Carolina involve more than one young (< 21) passenger. Thus, limiting Level 2 drivers to one passenger would not interfere with the large majority of trips, but would prohibit trips with the greatest risk.

A final consideration is **whether to exclude young family members** from a passenger restriction. Although there are occasions when a young, inexperienced driver needs to transport a sibling, there is no reason to believe that siblings are less likely to create distractions for the driver. Setting the limit at one passenger will allow novice drivers to transport a young family member if necessary. It seems unwise, however, to allow an inexperienced driver to carry more than one young family member. Not only would this create the high risk situation that a passenger restriction is designed to prevent, it would put at least 3 children of a single family in that risky situation.

Recommendation

It is recommended that the following provision be added to the restrictions that currently apply to drivers who possess a Level 2 license:

- **No more than one passenger under 21 years of age may ride in the vehicle unless the adult supervisor is also present in the vehicle.**

If there is a desire to exclude family members entirely from the limit on passengers, it is important that this exclusion not result in a situation where both family members and unrelated passengers are transported. Hence, wording like the following would be needed:

- *This limit does not apply to passengers who are members of the driver's immediate family and whose primary residence is the same household as that of the driver. However,*
  - *If a family member of the driver who is younger than 21 years of age is a passenger in the vehicle, no passengers who are not members of the driver's immediate family are allowed.*

House Judiciary I Committee

July 16, 2002

Minutes

The House Judiciary I Committee met on Tuesday, July 16, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present. Representatives Alexander, Insko, Nesbitt, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Sutton was recognized to explain House Bill 1553, AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ALLOW A CRIMINAL DEFENDANT IN A NONCAPITAL CASE TO WAIVE A JURY TRIAL, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION, (Attachment III).

Representative Sutton said that the bill would change the way the courts do business with regard to criminal cases in North Carolina. He said that many think the bill would have far-reaching ramifications, but others feel that it would not be used very often. Representative Sutton said that the bill would allow persons charged with non-capital crimes the right to waive a jury trial and have a trial by the judge only. He said that the bill has no fiscal impact.

Judge Eddie Green, State Court of Appeals, was recognized to offer additional background and history for the bill.

Ms. Susan Sitze, Committee Counsel, reminded the committee that the bill would require an amendment to the North Carolina Constitution. In order for the proposal to appear on a ballot, it must receive a 3/5 vote in each chamber of the General Assembly. A bill summary, prepared by Ms. Sitze, is attached to the minutes, (Attachment IV).

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, was recognized and spoke in opposition to the bill.

Mr. Johnson Britt, District Attorney, District 16B, and President of the Conference of District Attorneys, was recognized. He stated that the district attorneys had expressed no opposition to the bill.

Mr. Staples Hughes, Office of Appellate Defenders, spoke in opposition to the bill especially with respect to giving district attorneys the authority to set calendars.

Mr. Rob Scofield, North Carolina Justice Center spoke in opposition to the bill.

Chairman Hackney asked if the bill provided a point past which one could not waive a jury trial. Representative Sutton replied that the bill did not provide for this, but that he would not oppose an amendment to address that situation.

Representative Alexander asked what the advantage would be to the judicial process. Representative Sutton replied that the legislation would expedite the judicial process.

Committee discussion followed.

Chairman Hackney stated that a vote would not be taken at this meeting, and asked the members to study the bill and prepare any questions that they would like to address when the bill is scheduled at a future meeting

The meeting adjourned at 10:40 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 16, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1553 – WAIVE JURY TRIAL/CONSTITUTIONAL AMENDMENT
REPRESENTATIVE RONNIE SUTTON

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 16, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Henning	NC Bar Assoc.
Dick Taylor	NCATL
Rob Schofield	NC Jud. Ct.
[signature]	AOC
Letitia Withers	NC State Watch
Eddie [illegible]	Court of Appeals
Johnson Britt	Conference of DAs
Peg Dorer	Conference of DAs
Shayna Waites	intern
DAVID BARNES	Poyner + Spruill LLP
Charles Hughes	Office of Appellate Defender
LAO RUTBERT	CJK
John Mortaz	Gov office
Tye Hunter	Indigent Defense Services

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1553*

Short Title:	Waive Jury Trial/Constitutional Amendment.	(Public)
Sponsors:	Representative Sutton.	
Referred to:	Judiciary I.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ALLOW A CRIMINAL DEFENDANT IN A NONCAPITAL CASE TO WAIVE A JURY TRIAL, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 24 of Article I of the North Carolina Constitution reads as rewritten:

"**Sec. 24. Right of jury trial in criminal cases.**

No person shall be convicted of any capital crime but by the unanimous verdict of a jury in open court. A person charged with a noncapital crime has the right to a trial by jury, but the person may waive that right as provided by law."

The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo."

SECTION 2. G.S. 15A-1201 reads as rewritten:

"**§ 15A-1201. Right to trial by jury.**

In all criminal cases the defendant has the right to be tried by a jury of 12 whose verdict must be unanimous. In the district court the judge is the finder of fact in criminal cases, but the defendant has the right to appeal for trial de novo in superior court as provided in G.S. 15A-1431. In superior court all criminal trials in which the defendant enters a plea of not guilty must be tried before a ~~jury.~~ jury, unless the defendant is charged with a noncapital crime and waives the right to a trial by jury in writing. In any noncapital criminal case in which trial by jury is waived in superior court, the trial shall be heard and judgment rendered by the court."

SECTION 3. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2002, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment to allow a defendant in a noncapital criminal case to waive a jury trial."

SECTION 4. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification and applies to criminal offenses committed on or after January 1, 2003. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 5. Section 2 of this act becomes effective only if the constitutional amendment described in Section 1 is approved under Sections 3 and 4 of this act. If the constitutional amendment is approved, then Section 2 becomes effective January 1, 2003, and applies to criminal offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1553:
Waive Jury Trial/Constitutional Amendment

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Sutton
Date:	July 16, 2002	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1553 would allow criminal defendants in noncapital cases to waive their right to a jury trial.***

CURRENT LAW: Currently, the North Carolina Constitution and G.S. 15A-1201 require that any criminal defendant who pleads not guilty must have a jury trial. There is currently no right to waive the jury trial, except by pleading guilty to the offense.

BILL ANALYSIS: Section 1 of the bill amends Article I, Section 24 of the North Carolina Constitution to allow a person charged with a noncapital offense to waive their right to a trial by jury. The defendant would still have the right to a jury trial if they so desire.

Section 2 of the bill amends G.S. 15A-1201 to allow a person charged with a noncapital offense to waive their right to a jury trial and to have the trial heard and judgment rendered by the court.

Section 3 of the bill provides for the submission of the changes to the North Carolina Constitution, that are contained in Section 1 of the bill, to the qualified voters of the State in the general election in November 2002. This section sets out the specific question to be contained on the ballot.

Article XIII, Section 4 of the North Carolina Constitution allows the General Assembly to initiate amendments to the Constitution if the act submitting the proposal to the qualified voters of the State for their ratification passes both houses by 3/5 majorities of all the members. A majority of the votes cast by the qualified voters of the State is required to ratify the amendment.

Section 4 of the bill provides that if a majority of the votes cast on the constitutional amendment are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification and applies to criminal offenses committed on or after January 1, 2003.

Section 5 of the bill provides that Section 2, the changes to G.S. 15A-1201 become effective only if the constitutional amendment described in Section 1 is ratified and certified under Sections 3 and 4. If the constitutional amendment is approved, then Section 2 becomes effective January 1, 2003 and applies to criminal offenses committed on or after that date. The remainder of the act is effective when it becomes law.

BACKGROUND: This is a recommendation of the North Carolina Courts Commission, and was endorsed to the Commission by the North Carolina Judicial Conference.

HOUSE BILL 1553:
Waive Jury Trial/Constitutional Amendment

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Sutton
Date:	July 16, 2002	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

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BACKGROUND: This is a recommendation of the North Carolina Courts Commission, and was endorsed to the Commission by the North Carolina Judicial Conference.

House Judiciary I Committee

July 23, 2001

Minutes

The House Judiciary I Committee met on Tuesday, July 23, 2002 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Blust, Insko, Nesbitt, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the first bill to be discussed would be House Bill 1519, AN ACT TO MAKE CHANGES TO THE LAWS AFFECTING MOTOR CARRIER SAFETY, (Attachment III). He noted that Representative Jim Crawford, the sponsor of the bill, needed to be in another meeting and requested that Mr. Rick Zechini, Committee Counsel, explain the bill.

Mr. Zechini stated that a proposed committee substitute, (Attachment IV), had been distributed to the committee.

Representative Insko moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Mr. Zechini provided brief background for the bill that was recommended for introduction by the Joint Legislative Transportation Oversight Committee. He said that the intention of the bill is to give the Division of Motor Vehicles the necessary authority to participate in the Federal Motor Carrier safety Administration Performance and Registration Information Systems Management program. He provided the committee with a bill analysis that provides a more in-depth explanation of the bill, (Attachment V).

Captain George Gray, DMV Enforcement, spoke in support of the bill noting that it would provide safety to the public.

Brief committee discussion followed.

Representative Sutton moved that the proposed committee substitute be given a favorable report. The motion carried, (Attachment V).

Chairman Hackney stated that he often asks attorneys in his district to offer suggestions of needed legislation or legislation that might close existing loopholes. He said that the language in Senate Bill 402 was a result of that request. The provisions of the original Senate Bill 402 were included in another bill during the long session and Senate Bill 402 was used as a vehicle for the proposed committee substitute, AN ACT TO MODIFY THE SECRET PEEPING STATUTE, (ATTACHMENT VI).

Representative Arnold moved that the bill be adopted for the purpose of discussion. The motion carried.

Ms. Kayley Taber, Assistant Orange County District Attorney, was recognized. Ms. Taber provided the committee with background for the bill. She then explained the various sections of the bill that would make it a felony to create, possess or disseminate images of another person in a room without his or her consent. It would also make it a felony to install devices used to secretly videotape another person with his or her consent. The proposed law would not apply to law enforcement officers conducting an investigation, or jail or prison officials using cameras for security reasons or to investigate misconduct. A person caught peeping into a room while possessing a device that could create a photographic image would face a Class A1 misdemeanor and repeat offenders could face felony charges.

Ms. Susan Sitze, Committee Counsel, briefly explained the bill. A bill summary, prepare by Ms. Sitze, is attached to the minutes, (Attachment VII).

Following committee discussion, Chairman Hackney asked if the committee would like to further pursue the proposed legislation. The committee agreed to continue to work on the bill.

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 23, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1519 – MOTOR CARRIER SAFETY AMENDMENTS
REPRESENTATIVE JIM CRAWFORD

SENATE BILL 402 – KEEP ALTERNATE BASE PERIOD
PROPOSED COMMITTEE SUBSTITUTE - SECRET PEEPING CHANGES
SENATOR HORTON

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 23, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shirley McGuire	Federal Motor Carrier Safety Admin.
Capt. George Gray	DMV ENFORCEMENT
Sgt Tim Askew	DMV Enforcement
Sharon Matthews	DOT-DMV
Chris M. HARTLEY	FEDERAL MOTOR CARRIER SAFETY ADMIN
Charlie Diehl	NC Trucking Assn.
Aaron Cohen	ESC
April Bethea	News & Observer – press
Pat Dorer	Conference of DAs
Rob Schofield	NC Justice Ctr.
Doris Weaver	NC CWA Political Council
VL McBride	NCTA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 1519*

Short Title: Motor Carrier Safety Amendments. (Public)

Sponsors: Representatives J. Crawford; and Bowie.

Referred to: Judiciary I.

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAWS AFFECTING MOTOR CARRIER SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-54 is amended by adding a new subdivision to read:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(9) The vehicle is owned by a motor carrier company that has failed to maintain minimum safety standards as required by the Federal Motor Carrier Safety Regulations, and has been determined by the Federal Motor Carrier Safety Administration or the Division to be an unfit carrier based on safety compliance."

SECTION 2. G.S. 20-110 is amended by adding a new subsection to read:

"(m) The Division may rescind and cancel the registration plates issued to a motor carrier of passengers or property, when the motor carrier has failed to maintain minimum safety standards as required by the Federal Motor Carrier Safety Regulations, and has been determined by the Federal Motor Carrier Safety Administration or the Division to be an unfit carrier based on safety compliance."

SECTION 3. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. – The federal motor carrier safety regulations contained in 49 C.F.R. Parts 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. – Commerce between any of the following:

a. A place in the United States and a place in a foreign country.
b. Places in the United States through any foreign country.

(3) Interstate commerce. – As defined in 49 C.F.R. Part 390.5.

(3a) Interstate motor carrier. – Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in 49 C.F.R. § 390.5 in interstate commerce.

(4) Intrastate commerce. – As defined in 49 C.F.R. Part 390.5.

(5) Intrastate motor carrier. – Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in G.S. 20-4.01(3d) in intrastate commerce."

SECTION 4. G.S. 20-381(a) is amended by adding a new subdivision to read:

"(2b) To prohibit the operation of any motor carrier in interstate or intrastate operations when the motor carrier has failed to maintain minimum safety standards as required by the Federal Motor Carrier Safety Regulations, and has been determined by the Federal Motor Carrier Safety Administration or by the Division to be an unfit carrier based on safety compliance. In the event of an interstate carrier who has been ordered to cease operations by the Federal Motor Carrier Safety Administration, any intrastate operations of that motor carrier shall also be prohibited until the motor carrier has complied with the minimum safety requirements."

SECTION 5. This act becomes effective December 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 1519
PROPOSED COMMITTEE SUBSTITUTE H1519-PCS8355-RW-64

Short Title: Motor Carrier Safety Amendments. (Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO REFUSE TO ISSUE A CERTIFICATE OF TITLE FOR, AND TO REFUSE OR CANCEL THE REGISTRATION OF, A MOTOR VEHICLE OWNED BY A MOTOR CARRIER THAT IS DETERMINED TO BE AN IMMINENT HAZARD; TO CLARIFY THE DEFINITION OF INTERSTATE AND INTRASTATE MOTOR CARRIER; TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DETERMINE THE SAFETY FITNESS OF INTRASTATE MOTOR CARRIERS; AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO PROHIBIT THE INTRASTATE OPERATIONS OF A MOTOR CARRIER THAT IS DETERMINED TO BE AN IMMINENT HAZARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-54 is amended by adding a new subdivision to read:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(9) The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an 'imminent hazard' as defined in 49 C.F.R. §386.72(b)(1)."

SECTION 2. G.S. 20-110 is amended by adding a new subsection to read:

"(m) The Division shall rescind and cancel the registration of vehicles of a motor carrier that is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an 'imminent hazard' as defined in 49 C.F.R. §386.72(b)(1)."

SECTION 3. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. – The federal motor carrier safety regulations contained in 49 C.F.R. Parts 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. – Commerce between any of the following:

a. A place in the United States and a place in a foreign country.

b. Places in the United States through any foreign country.

(3) Interstate commerce. – As defined in 49 C.F.R. Part 390.5.

(3a) Interstate motor carrier. – Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in 49 C.F.R. § 390.5 in interstate commerce.

(4) Intrastate commerce. – As defined in 49 C.F.R. Part 390.5.

(5) Intrastate motor carrier. – Any person, firm, or corporation that operates or controls a commercial motor vehicle as defined in G.S. 20-4.01(3d) in intrastate commerce."

SECTION 4. G.S. 20-381(a) is amended by adding a new subdivision to read:

"(4) To determine the safety fitness of intrastate motor carriers, to assign safety ratings to intrastate motor carriers as defined in 49 C.F.R. §385.3, to direct intrastate motor carriers to take remedial action when required, to prohibit the operation of intrastate motor carriers rated unsatisfactory, to determine whether the continued operations of intrastate motor carriers pose an 'imminent hazard' as defined in 49 C.F.R. §386.72(b)(1), and to prohibit the operation of an intrastate motor carrier found to be an 'imminent hazard' as defined in 49 C.F.R.§386.72(b)(1)."

SECTION 5. G.S. 20-381(a) is amended by adding a new subdivision to read:

"(5) To prohibit the intrastate operation of a motor carrier subject to an order issued by the Federal Motor Carrier Safety Administration to cease all operations based on a finding that the continued operations of the motor carrier pose an 'imminent hazard' as defined in 49 C.F.R. §386.72(b)(1)."

SECTION 6. The Division shall adopt rules to implement the provisions of this act.

SECTION 7. This act becomes effective December 1, 2002.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1519 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAWS AFFECTING MOTOR CARRIER SAFETY.

☐ 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 D

SENATE BILL 402
PROPOSED HOUSE COMMITTEE SUBSTITUTE S402-CSSA-44 [v.3]

7/18/2002 2:13:52 PM

Short Title: Secret Peeping Changes (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SECRET PEEPING STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202 reads as rewritten:

"§ 14-202. Secretly peeping into room occupied by ~~female person.~~another person.

(a) Any person who shall peep secretly into any room occupied by ~~a female person~~another person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who uses any device to create a photographic image while secretly peeping into any room shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class H felony.

(f) Any person who, for the purpose of arousing or gratifying sexual desire, secretly or surreptitiously uses or installs in a room any device that can be used to create a

photographic image, with the intent to capture the image of another without their consent, shall be guilty of a Class H felony.

(g) Any person who possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class H felony.

(h) Any person who, without consent, disseminates or allows to be disseminated images obtained as a result of the violation of this section shall be guilty of a Class G felony.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense two classes higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class I felony. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class H felony.

(j) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image, and is entitled to recover from those persons, actual damages, punitive damages, and reasonable attorneys' fees and other litigation costs reasonably incurred.

(k) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(l) This section does not apply to:

(1) Law enforcement officers while discharging or attempting to discharge their official duties; or

(2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility."

SECTION 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for violation of G.S. 14-202(a) or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(k) requiring the individual to register."

SECTION 3. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

SENATE BILL 402:
Secret Peeping Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Horton (original bill)
Date:	July 23, 2002	**Summary by:**	Susan L. Sitze
Version:	S402-CSSA-44[v.3]		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 402 would modify the secret peeping statute.***

CURRENT LAW: The current statute, G.S. 14-202, provides for a Class 1 misdemeanor for a person secretly peeping into a room occupied by a female person.

BILL ANALYSIS: **Section 1** of the proposed committee substitute would modify the current language of G.S. 14-202, and would add several new subsections as follows:

Subsection (a) is created from the original statute. The current language is modified to apply to secretly peeping into a room occupied by "any person", not just a female person.

Subsection (b) defines the term "photographic image" as any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual. This subsection also defines "room" as including, but not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

Subsection (c) would provide for a Class A1 misdemeanor for any person secretly peeping into a room while in possession of any device which may be used to create a photographic image.

Subsection (d) would provide for a Class I felony for any person who uses any device to create a photographic image while secretly peeping into a room.

Subsection (e) would provide for a Class H felony for any person who secretly or surreptitiously uses any device to create a photographic image of another person under or through the clothing being worn by that person for the purpose of viewing the body of, or the undergarments worn by, that person without their consent.

Subsection (f) would provide a Class H felony for any person who, for the purpose of arousing or gratifying sexual desire, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image, with the intent to capture the image of another without their consent.

Subsection (g) would provide for a Class H felony for any person who possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section.

Subsection (h) would provide for a Class G felony for any person who, without consent, disseminates or allows to be disseminated images obtained as a result of the violation of this section.

Subsection (i) would provide punishment for a second or subsequent violation of this section at a level two classes higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class I felony and a second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class H felony.

Subsection (j) would allow any person whose image is captured or disseminated a civil cause of action against the persons capturing or disseminating the image, or any person who procured another person to

capture or disseminate the image. The plaintiff is allowed to recover actual damages, punitive damages, and reasonable attorney's fees and other litigation costs reasonably incurred.

Subsection (k) would allow the court to require someone who violates this section to register as a sex offender. The court shall consider whether the person is a danger to the community and whether requiring the person to register would further the purposes of sex offender registration.

Subsection (l) provides exceptions to this section for law enforcement officers while discharging or attempting to discharge their official duties, and for personnel of the Department of Correction or local jails for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local jail.

Section 2 of the proposed committee substitute makes a conforming amendment to the sex offender registration statutes.

Section 3 provides that this act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

House Judiciary I Committee

July 30, 2002

Minutes

The House Judiciary I Committee met on Tuesday, July 30, 2002 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Blust, Boyd-McIntyre, Insko, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

A new proposed committee substitute for Senate Bill 402, AN ACT TO MODIFY THE SECRET PEEPING STATUTE, (Attachment III), was distributed to the members. A proposed committee substitute had been adopted during the July 23, 2002 meeting of the committee. The new committee substitute was drafted to include changes that the committee had agreed upon during that meeting.

Representative Sutton moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the changes made by the committee substitute.

Representative Sutton offered an amendment to add the words "for the purpose of arousing or gratifying the sexual desire of any person" to page 1, lines 20-21 of the committee substitute, (Attachment IV).

Ms. Kayley Taber, Assistant District Attorney, Orange County, commented briefly on the proposed amendment.

Upon a vote of the committee, the amendment was adopted.

Representative Insko offered an amendment, (Attachment V), to insert a requirement that the defendant obtain a psychological evaluation and comply with recommended treatment.

Ms. Taber spoke in support of the proposed amendment.

The amendment was adopted.

Representative Alexander moved that the two amendments be rolled into a new committee substitute, that the committee substitute be given a favorable report, and the original bill be given an unfavorable report. The motion carried, (Attachment VI). A copy of the new committee substitute is attached, (Attachment VII).

The meeting adjourned at 10:40 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JULY 30, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 402 – KEEP ALTERNATE BASE PERIOD
(PROPOSED COMMITTEE SUBSTITUTE - SECRET PEEPING CHANGES)
REPRESENTATIVE HACKNEY

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

July 30, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
April Bethea	The News & Observer
Lethia Withrow	NC State Watch
John M Maag	NC CWA Council
[illegible]	[illegible] Council
James Andrews	NC State AFL-CIO
Pat Dorer	Conference of D.A.s
Paul Meredith	NC State Grange

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 402
PROPOSED HOUSE COMMITTEE SUBSTITUTE S402-CSSA-45 [v.5]

7/30/2002 9:11:02 AM

Short Title: Secret Peeping Changes. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SECRET PEEPING STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202 reads as rewritten:

"**§ 14-202. Secretly peeping into room occupied by ~~female person.~~another person.**

(a) Any person who shall peep secretly into any room occupied by ~~a female person~~another person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room, shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class I felony.

(f) Any person who, for the purpose of arousing or gratifying sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used

to create a photographic image, with the intent to capture the image of another without their consent, shall be guilty of a Class I felony.

(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class I felony.

(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section, shall be guilty of a Class I felony if the dissemination is without the consent of the person in the photographic image.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

(j) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image, and is entitled to recover from those persons, actual damages, punitive damages, and reasonable attorneys' fees and other litigation costs reasonably incurred.

(k) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(l) This section does not apply to:

(1) Law enforcement officers while discharging or attempting to discharge their official duties; or

(2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility."

SECTION 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense

against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for violation of G.S. 14-202(a) or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(k) requiring the individual to register."

SECTION 3. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 402

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

S402-ASA-81 [v.1]

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
S402-CSSA-45

Representative Sutton

moves to amend the bill on page 1, lines 20-21
by rewriting those lines to read:
"person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room, for the purpose of arousing or gratifying the sexual desire of any person, shall be guilty of a Class I felony."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 402

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

S402-ASA-79 [v.2]

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
S402-CSSA-45

Representative Insko

moves to amend the bill on page 2, lines 14-15
by inserting between the lines the following:

"(j) If the defendant is placed on probation as a result of violation of this section:

(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

The judge may impose any other lawful condition of probation.";

And on page 2, line 15 by deleting "(j)" and inserting "(k)";

And on page 2, line 20 by deleting "(k)" and inserting "(l)";

And on page 2, line 27 by deleting "(l)" and inserting "(m)";

And on page 3, line 10 by deleting "14-202(k)" and inserting "14-202(l)".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 402

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

S402-ASA-79 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SIGNED Vera Insko
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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 402 A BILL TO BE ENTITLED AN ACT REPEALING THE SUNSET PROVISION RELATING TO THE REDEFINITION OF THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND THE ONE AND ONE-HALF TIMES TEST.

☐ 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). ~~(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 D

SENATE BILL 402
PROPOSED HOUSE COMMITTEE SUBSTITUTE S402-PCS6889-SA-45

Short Title: Secret Peeping Changes. (Public)

Sponsors:

Referred to:

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202 reads as rewritten:

"**§ 14-202. Secretly peeping into room occupied by ~~female person.~~another person.**

(a) Any person who shall peep secretly into any room occupied by ~~a female person~~another person shall be guilty of a Class 1 misdemeanor.

(b) For purposes of this section:

(1) The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission, or any digital image, of any individual.

(2) The term "room" shall include, but is not limited to, a bedroom, a restroom, a bathroom, a shower, and a dressing room.

(c) Unless covered by another provision of law providing greater punishment, any person who, while in possession of any device which may be used to create a photographic image, shall secretly peep into any room shall be guilty of a Class A1 misdemeanor.

(d) Unless covered by another provision of law providing greater punishment, any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room, for the purpose of arousing or gratifying the sexual desire of any person, shall be guilty of a Class I felony.

(e) Any person who secretly or surreptitiously uses any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a Class I felony.

(f) Any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image, with the intent to capture the image of another without their consent, shall be guilty of a Class I felony.

(g) Any person who knowingly possesses a photographic image that the person knows, or has reason to believe, was obtained in violation of this section shall be guilty of a Class I felony.

(h) Any person who disseminates or allows to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this section, shall be guilty of a Class I felony if the dissemination is without the consent of the person in the photographic image.

(i) A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

(j) If the defendant is placed on probation as a result of violation of this section:

(1) For a first conviction under this section, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(2) For a second or subsequent conviction under this section, the judge shall impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation.

(k) Any person whose image is captured or disseminated in violation of this section has a civil cause of action against any person who captured or disseminated the image or procured any other person to capture or disseminate the image, and is entitled to recover from those persons, actual damages, punitive damages, and reasonable attorneys' fees and other litigation costs reasonably incurred.

(l) When a person violates subsection (d), (e), (f), (g), or (h) of this section, or is convicted of a second or subsequent violation of subsection (a) or (c) of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

(m) This section does not apply to:

(1) Law enforcement officers while discharging or attempting to discharge their official duties; or

(2) Personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility."

SECTION 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for violation of G.S. 14-202(a) or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register."

SECTION 3. This act becomes effective December 1, 2002, and applies to offenses committed on or after that date.

House Judiciary I Committee

August 14, 2002

Minutes

The House Judiciary I Committee met on Wednesday, August 14, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Arnold, Blust, Clary Insko, Nesbitt, Redwine, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Under consideration by the committee was Senate Bill 1218, AN ACT TO IMPROVE THE ENFORCEMENT OF TAX LAWS BY CRIMINALIZING OR INCREASING THE PENALTY FOR CERTAIN FORMS OF TAX FRAUD AND BY ALLOWING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION TO LAW ENFORCEMENT AGENCIES, (Attachment III). Chairman Hackney noted that the bill was a Revenue Laws Study Committee bill introduced by Senator Clodfelter who was unable to attend the meeting.

Mr. Frank Folger, Committee Counsel, was recognized to explain the bill. He said that the bill has three separate provisions dealing with revenue laws enforcement. The bill increases the penalties for tax return preparers who are engaged in assisting in defrauding the Department of Revenue. The bill creates a new criminal violation for tax return preparers who pocket taxpayers' money instead of submitting it to the Department of Revenue. The bill also allows for the sharing of information with state and federal law enforcement agencies obtained during a criminal investigation of a taxpayer.

Mr. Folger offered a section-by-section explanation of the bill. Details of the bill may be found in the bill analysis prepared by Mr. Folger, (Attachment IV).

Ms. Sabra Faires, Deputy Secretary, Department of Revenue, commented briefly in support of the bill.

Chairman Hackney requested more information regarding the degree of felonies that are set forth in the bill, as compared to current degree of felonies.

Mr. Tom Dixon, Department of Revenue, said that currently the level of felony is a Class H felony. He said that the bill would create a step up level of felony for "paid" income tax preparers. This step would be a Class F unless the individual causes harm to the state of over $100,000.

Mr. Folger was recognized for comment on the classifications of felons. He said that Class C felony is punishable with a minimum of 44 – 261 months in prison and is mandatory incarceration if found guilty. He said that this would be the highest classification and would apply if a tax return preparer is found to have willfully defrauded the government of $100,000 or more in a tax year. Mr. Folger said that a Class F felony, under the new proposal, would carry a minimum of 10 months and maximum of 68

months possible incarceration. This would be subject to intermediate or active sentence under the structured sentencing laws. Mr. Folger stated that under existing Class H felony law, a tax preparer could face between 4-30 months maximum of community punishment, intermediate punishment or active sentence.

Representative Redwine asked if the state is ever able to recover any of the lost revenue and whether the bill allows for restitution.

Mr. Dixon replied that some of the funds are recovered.

Considerable committee discussion followed.

Mr. Jim Mills, Fiscal Research, commented on the fiscal note prepared for the bill, (Attachment V).

Representative Sutton moved for a favorable report. The bill was given a favorable report, (Attachment VI). Representative Nesbitt voted in opposition to the bill.

The meeting was adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

AUGUST 14, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 1218 – REVENUE L AWS ENFORCEMENT ENHANCEMENTS
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

August 14, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Dixon	NC DOR
Lutitia Witiron	NC State Water
Sabra Faires	N C Dept. of Revenue
Matt Willoughby	NCNA
Michelle Frazier	NC Bar Ass'n

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 1218

Short Title:	Revenue Laws Enforcement Enhancements.	(Public)
Sponsors:	Senators Clodfelter, Dalton, Hartsell, Hoyle, and Kerr.	
Referred to:	Judiciary I.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ENFORCEMENT OF TAX LAWS BY CRIMINALIZING OR INCREASING THE PENALTY FOR CERTAIN FORMS OF TAX FRAUD AND BY ALLOWING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION TO LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this Article:

...

(4) Income Tax Return Preparer. – Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by Article 4 of this Chapter or any claim for refund of tax imposed by Article 4 of this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment."

SECTION 2. G.S. 105-236(9a) reads as rewritten:

"(9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or

false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, ~~shall be~~is guilty of a ~~Class H felony.~~felony as follows:

a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony.

b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony.

c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony."

SECTION 3. G.S. 105-159.1(e) reads as rewritten:

"(e) ~~A~~An ~~paid preparer of tax returns~~income tax return preparer may not designate on a return that the taxpayer does or does not desire to make the political contribution authorized in this section unless the taxpayer or the taxpayer's spouse has consented to the designation."

SECTION 4. G.S. 105-236 is amended by adding a new subdivision to read:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

(10b) Misrepresentation Concerning Payment. – A person who receives money from a taxpayer with the understanding that the money is to be remitted to the Secretary for application to the taxpayer's tax liability and who willfully fails to remit the money to the Secretary is guilty of a Class F felony."

SECTION 5. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

"(15a)To furnish to the head of the appropriate State or federal law enforcement agency information concerning the commission of an offense under the jurisdiction of that agency discovered by the Department during a criminal investigation of the taxpayer."

SECTION 6. Sections 1 through 4 of this act become effective December 1, 2002, and apply to actions that are committed on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1218:
Revenue Law Enforcement Enhancements

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Clodfelter (Revenue Laws Recommendation)
Date:	August 14, 2002		
Version:	1st Edition	**Summary by:**	Frank W. Folger Committee Counsel

SUMMARY: ***Senate Bill 1218 makes three substantive changes to the revenue laws. First, it allows for enhanced punishment when an income tax return preparer aids or assists in the filing of false or fraudulent documents with the Department of Revenue. Second, it creates an offense for fleecing taxpayers. Third, it allows the Department of Revenue to share information concerning the commission of an offense with appropriate State or federal law enforcement agencies.***

BILL ANALYSIS:

Sections 1 and 2 provide for enhanced punishment when an income tax return preparer aids or assists in the filing of false or fraudulent documents with the Department of Revenue. In Section 1, the definition of income tax return preparer used under the Internal Revenue Code is incorporated into the State income tax laws. Under Section 2, an income tax return preparer who aids or assists in the filing of false or fraudulent documents would be guilty of a Class F felony if the total amount of tax fraudulently avoided in one taxable year on all returns is less than one hundred thousand dollars ($100,000). If the total amount of tax fraudulently avoided in one taxable year equals one hundred thousand dollars ($100,000) or more, the income tax return preparer would be guilty of a Class C felony. These punishments are the same as the punishments for embezzlement under Article 18 of Chapter 14 of the General Statutes. For all other persons, it remains a Class H felony to aid, assist, procure, counsel, or advise the preparation, presentation, or filing of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter.

> *Current law: It is a Class H felony to aid, assist, procure, counsel, or advise the preparation, presentation, or filing of a return, affidavit, claim, or other document that is fraudulent or false as to any material matter.*
>
> *Background: Over the past few years, the Department has noticed an increase in the number of fraudulent return cases involving an income tax return preparer. According to the Department, these cases generally involve income tax return preparers that intentionally inflate the itemized deductions claimed on a return or include fictitious business losses on the return. This fraud is carried out in order to reduce taxable income, thereby reducing tax liability. The Department has also noticed an increase in the number of fictitious returns. These are returns that are based on fictitious wage and tax statements.*

Section 3 makes a conforming change in G.S. 105-159.1(e) to incorporate the definition of income tax return preparer.

Section 4 would make it a Class F felony for a person to receive money from a taxpayer with the understanding that the person would remit the money to the Secretary for application on a tax liability and then willfully fail to remit the money to the Secretary. The penalty is the same as for embezzlement totaling less than one hundred thousand dollars ($100,000).

Current Law: No specific crime. Conduct falls under the category of embezzlement.

Background: The Department reports that several times a year they will have a situation where an accountant receives money from a taxpayer to satisfy a sales or withholding tax liability. The accountant then files a fraudulent return showing reduced or zero tax due and then pockets the taxpayer's money. Although the Department can and does bring charges against the accountant for filing a fraudulent return, the taxpayer still owes the money that he or she has lost. The taxpayer must then get the local district attorney to file embezzlement charges. The Department reports that the district attorneys would prefer that the Department handle this since it involves taxes and since the Department is already involved.

Sections 1 through 4 would become effective December 1, 2002, and would apply to criminal offenses committed on or after that date.

Section 5 would allow the Department of Revenue to share, with appropriate State or federal law enforcement agencies, information it discovers during a criminal investigation of a taxpayer.

Current law and background: The Department may provide information concerning a tax imposed by Article 2A, 2C, or 2D[1] to law enforcement agencies. However, the Criminal Investigation Division of the Department occasionally discovers evidence of criminal activity unrelated to the taxes imposed in those Articles. Under current law, the Department is not allowed to disclose that information to law enforcement.

This section would become effective when it becomes law.

Canaan Huie, Counsel to the Senate Finance Committee, contributed substantially to this summary.

[1] These Articles deal with the tobacco products tax, alcoholic beverage license and excise taxes, and unauthorized substances taxes.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE (Revised Version of July 16 Note)
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: SB 1218 Revised First Edition

SHORT TITLE: Revenue Laws Enforcement Enhancements

SPONSOR(S): Senators Clodfelter, Dalton, Hartsell, Hoyle, and Kerr

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					
Recurring	**0**	**$78,123**	**$187,754**	**$276,260**	**$369,915**
Judicial					
Recurring	**$9,035**	**$16,272**	**$17,085**	**$17,940**	**$18,837**
Dept. of Revenue	**No**	**Estimate**	**Available.**	**Minor impact**	**Possible**
TOTAL EXPENDITURES:	**$9,035**	**$94,395**	**$204,839**	**$294,200**	**$388,752**
ADDITIONAL PRISON BEDS*	**0**	**3**	**7**	**10**	**13**
POSITIONS (DOC only):	**0**	**1**	**3**	**4**	**5**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of Revenue

EFFECTIVE DATE: December 1, 2002 (all provisions except disclosure, which is effective when it becomes law)

**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.*

NOTE: This revised fiscal note lowers the estimated fiscal impact of SB 1218 due to a lower estimate of the number of possible Class C felony convictions.

BILL SUMMARY:

SB 1218 provides for enhanced punishment when an "Income Tax Return Preparer" (as defined) willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or other document that the person knows is false or fraudulent. Specifically, the bill amends G.S. 105-236 (9a) to increase a penalty from a Class H felony to a Class C felony if the total amount of tax avoided exceeds $100,000 and from a Class H to F felony if the amount is less than $100,000. *(Current law makes the penalty a Class H regardless of total amount of tax avoided).*

SB 1218 also amends G.S. 105-236 by adding a new subdivision (10b) that makes it a Class F felony for a person to willfully retain money received from a taxpayer that was intended to be remitted in payment of tax liability.

The bill would also allow those persons who have legal access to a person's tax information to disclose information discovered by the Department of Revenue (DOR) during a criminal investigation to the appropriate state or federal authorities. This disclosure provision is effective when it becomes law. All other provisions are effective December 1, 2002.

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, SB 1218. As shown in bold in the chart below, the Sentencing Commission estimates this specific legislation will add 13 inmates to the prison system by the end of FY 2006-07.

	June 30 2003	June 30 2004	June 30 2005	June 30 2006	June 30 2007
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	34,129	34,840	35,647	36,485	37,405
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	32,087	34,679	34,847	34,847	34,847
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-2,042	-161	-800	-1,638	-2,558
4. No. of Projected Additional Inmates Due to this Bill[3]	0	3	7	10	13
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill[3]	0	3	7	10	13

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts 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 12/13/01. 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 potential loss in bed capacity due to any proposals in the 2002 Session to eliminate prison beds or close prisons.***

[3] Criminal Penalty bills effective December 1, 2002 will only affect inmate population for one month of FY 2002-03, June 2003, due to the lag time between when an offense is committed and an offender is sentenced.

POSITIONS: It is anticipated that approximately five (5) positions would be needed to supervise the additional inmates housed under this bill by the end of year 5. These position totals include security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last three prisons opened by the Department of Correction (DOC) and the three new prisons under construction.

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: 19%
Medium Custody 62%
Minimum Custody 19%

OPERATING COSTS: Operating costs are based on actual 2000-01 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate will be added each year to the base costs for FY 2001 shown below and included in the recurring costs estimated in the Fiscal Impact Table on Page 1.

Daily Inmate Operating Cost 2000-01

Custody Level	Minimum	Medium	Close	Statewide Average
Daily Cost Per Inmate (2000-01)	$54.02	$67.43	$84.21	$65.29

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2003 and 2004; this is based on the assumption that DOC cannot build prisons quickly enough to house additional offenders before 2004-05 and/or (2) if the number of beds is anticipated to be less than 400 beds total, since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or establish temporary beds in the State system. For these circumstances, the Fiscal Research Division (FRD) will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost unless a bill generates a high proportion of close custody beds, beds that are the most expensive in the system and difficult to contract out. **For SB 1218, only the operating costs at the statewide average are included.**

SB 1218: Revenue Laws Enforcement Enhancements (DOC Operating Costs). SB 1218 sets the criminal penalties at Class C for tax preparer fraud greater than $100,000 and at Class F for tax preparer fraud less than $100,000. The Department of Revenue indicates that 10 cases were prosecuted against tax preparers under current G.S. 105-236 (9a) in 2001 and there are 20 cases in various stages in 2002. Additional information provided by DOR since completion of the original

fiscal note indicates that one of the 10 cases in 2001 would have clearly exceeded the $100,000 limit and several other cases may have been charged as Class C, had the proposed Class C penalty been in effect. Therefore, it is assumed that at least 40% of the cases would result in Class C convictions if SB 1218 were ratified. DOR indicates the rate of Class C convictions could be lower, but given the intent of the bill to prosecute egregious offenders at the Class C level, FRD assumes at least a rate of 40%. This percentage could increase or decrease depending on actions by DOR and district attorneys on future cases. *(Note: Original fiscal note assumed 100% at Class C.)*

According to the Sentencing and Policy Advisory Commission, if all potential offenders were convicted of Class F felonies, nine prison beds would be needed by the end of FY 2007. However, given the potential for more cases to be prosecuted at the Class C level, FRD assumes that at least 40% of cases will exceed $100,000 and offenders will be convicted of Class C felonies. The Sentencing Commission projected several scenarios in determining the impact of SB 1218 on prison beds. FRD used the option that assumes approximately 40% of convictions would be at Class C and the remainder at Class F. Under this scenario, 13 new prison beds will be needed by 2007 and approximately three beds annually after 2007. *(Note: Cases and conviction data are not the same number. The DOR cases that are investigated and prosecuted may not result in convictions. The Sentencing Commission model is based on historical conviction rates with a general growth rate applied; the model does not include anticipated investigations. For SB 1218, the Sentencing Commission used 7 Class H convictions in 2001 as the starting point for projections).*

The estimated cost for these prison beds, including inflation, is presented below.

	FY 2003	2004	2005	2006	2007
Prison Beds Per Year	**0**	**3**	**7**	**10**	**13**
Cost for New Beds	**$0**	**$78,123**	**$187,754**	**276,260**	**$369,915**

SB 1218 also adds a new criminal penalty, a Class F felony, for any person to misrepresent to another that monies received would be applied against the other person's tax liability. The cost for this new felony cannot be determined. There could be some fiscal impact but since there are several cases a year already covered under current embezzlement statutes, the impact should be minimal.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

General

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of a 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.

SB 1218 Revenue Laws Enforcement Enhancements

AOC generally assumes that increasing the criminal penalty to Class C for tax preparer fraud over $100,000 will result in more vigorous defense and increase trial rates. Based on revised DOR data, AOC developed several possible scenarios including all cases handled as Class C under the proposed change in G.S.105-236 (9a), or a mix of Class C and Class F felonies. The Administrative Office of the Courts also assumed that given recent increases in DOR cases, the number of cases will be at least 20 per year and possibly more, of which 16 will be prosecuted.

Based on information provided by DOR balanced by the presumed intent of the bill to prosecute more cases at the Class C level, FRD believes it is more likely that cases will be a mix of Class C and F. Therefore, FRD has used the mixed scenario provided by AOC to estimate fiscal impact. This scenario assumes 50 % of cases at Class C and 50% at Class F (but final convictions could be lower percentage). *The cost and trial/plea rate could go up or down depending on nature of future cases and the actions by the involved agencies.*

2 Class C trials =	$9,722
6 Class C pleas =	923
2 Class F trials	5,629
6 Class F pleas	585
TOTAL	16,859
Minus Cost of current Class H	1,362
TOTAL	$15,497

Cost in FY 03 is 7/12 of $15,497 or $9035. FY 2004 is $16,272.

It is also assumed that due to the nature of this offense and the anticipated solvency of the defendants, that there will be no indigent defendants; therefore costs for indigent defense are not included.

The bill also creates a new Class F felony for persons who willingly fail to remit funds intended to pay for tax liability. The fiscal impact for a new felony cannot be determined but AOC believes there will be minimal fiscal impact since many of these cases are currently prosecuted under embezzlement laws.

Department of Revenue

The Department of Revenue indicates the recent increase in cases of fraud by income tax preparers has substantially increased workload. DOR cases have increased from seven in 2000, to ten in 2001 and 20 in 2002. However, these workload increases have been handled with current staffing. Increasing and adding criminal penalties should not of themselves significantly increase fiscal impact since most of the cases DOR is currently handling are the complex cases affected by this bill. Further, there could be some deterrent effect by increasing criminal penalties.

There could be some fiscal impact due to increased trials for Class C cases but the amount cannot be determined.

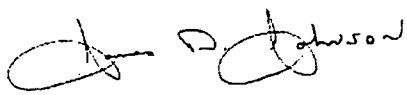
SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Revenue, and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Mills

APPROVED BY: James D. Johnson



DATE: July 23, 2002

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 1218 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE ENFORCEMENT OF TAX LAWS BY CRIMINALIZING OR INCREASING THE PENALTY FOR CERTAIN FORMS OF TAX FRAUD AND BY ALLOWING THE DEPARTMENT OF REVENUE TO DISCLOSE CERTAIN INFORMATION TO 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 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 Judiciary I Committee

August 20, 2002

Minutes

The House Judiciary I Committee met on Tuesday, August 20, 2002 at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Nesbitt, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Gulley was recognized for an explanation of Senate Bill 1392, AN ACT TO REDUCE THE REQUIRED STORAGE PERIOD FOR UNCLAIMED PROPERTY HELD BY LAW ENFORCEMENT IN MECKLENBURG COUNTY, (Attachment III). Representative Gulley stated that the local bill would reduce the required storage period for unclaimed property held by law enforcement in Mecklenburg County. He said that most of the property is stolen goods and that the county currently has an auction twice a year to dispose of the goods. The storage facility now reaches its capacity before the 180-day required storage period is up. The county has requested that the required period be reduced to a 60-day storage period and a 30-day notice for disposal of the goods. A bill analysis prepared by Ms. Susan Size, Committee Counsel, is attached, (Attachment IV).

Representative Arnold asked if the unclaimed property could possibly include any type of evidence in an ongoing case.

Ms. Size replied that evidence is held in a separate facility.

Representative Sutton moved for a favorable report. The motion carried, (Attachment V).

Representative Hackney was recognized to explain Senate Bill 662, AN ACT AMENDING AN ACT AUTHORIZING ORANGE COUNTY TO REGULATE OPEN BURNING, (Attachment VI). He said that the 2000 General Assembly allowed Orange County to require a permit for the open burning of trees, limbs, stumps and construction debris for subdivision, but not agricultural or horticultural purposes. He said that Carr and Cheeks precincts were exempted because they were represented in part by Representative Allred who opposed the bill. As a result of redistricting, Representative Allred will no longer represent those precincts. The bill will put Carr and Cheeks precincts in with the remainder of Orange County for the purpose of the regulation of opening burning.

Representative Alexander moved for a favorable report. The motion carried, (Attachment VII).

Mr. Frank Folgers, Committee Counsel, was recognized for an explanation of Senate Bill 712, AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES, (Attachment VIII). Mr. Folgers stated that the bill would authorize a

judges to have eight-year terms rather than four-year terms. A bill analysis, prepared by Mr. Folger, is included in the attachments, (Attachment IX).

Judge Robert Rader, Wake County District Court and Cochair, North Carolina Association of District Court Judges, was recognized and spoke in support of the bill.

Representative Arnold asked how 8-year terms would guarantee better judges and said that he would prefer 4-year terms.

Judge Rader replied that 8-year terms would encourage more seasoned people to run.

Representative Sutton stated that he felt this to be a fairness issue. He spoke in support of the bill.

Representative Nesbitt spoke in opposition to the bill.

Representative Sutton reminded the committee that the bill calls for a referendum and is not a final say by the General Assembly. He said that the public should be allowed to decide the issue.

No action was taken on the bill and the meeting was adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

AUGUST 20, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 662 – ORANGE OPEN BURNING REGULATION
SENATORS KINNAIRD AND LEE

SENATE BILL 712 – DISTRICT JUDGE 8-YEAR TERMS
SENATOR RAND

SENATE BILL 1392 – MECKLENBURG UNCLAIMED PROPERTY
SENATOR CLODFELTER

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

August 20, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT RADER	N.C. ASSOC. OF DISTRICT COURT JUDGES
ALLAN HEAD	NC BAR ASSOC
Michelle Frazier	NC Bar Assoc.
Letitia Withrow	NC StateWatch
John Phelps	NCLM
[illegible]	Capitol Group
John McHugh	GOV OFFICE
Boyd Cansler	City of Charlotte
Bill Wilson	NCATL
[illegible]	NCAWA
[illegible]	NCAJL
[illegible]	NCFPC
[illegible]	ACR
[illegible]	Charlotte Chamber

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 1392
Judiciary I Committee Substitute Adopted 7/11/02

Short Title: Mecklenburg Unclaimed Property. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE REQUIRED STORAGE PERIOD FOR UNCLAIMED PROPERTY HELD BY LAW ENFORCEMENT IN MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-12(a) reads as rewritten:

"(a) Unless otherwise provided herein, whenever such articles in the possession of any sheriff or police department have remained unclaimed by the person who may be entitled thereto for a period of ~~180~~ 60 days after such seizure, confiscation, or receipt thereof in any other manner, by such sheriff or police department, the said sheriff or police department in whose possession said articles are may cause to be published one time in some newspaper published in said county a notice to the effect that such articles are in the custody of such officer or department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than 30 days from the date of the publication of such notice or in default thereof, such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information as the said officer or department may consider necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates."

SECTION 2. This act applies only to Mecklenburg County.

SECTION 3. This act is effective when it becomes law and applies to property received by the sheriff or police department on or after that date.

SENATE BILL 1392:
Mecklenburg Unclaimed Property

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	August 20, 2002	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 1392 would permit law enforcement agencies in Mecklenburg County to dispose of unclaimed property after 60 days instead of 180 days.***

CURRENT LAW: G.S. 15-12 allows law enforcement agencies to dispose of unclaimed property 180 days after seizure, confiscation, or receipt. Before the property can be sold the law enforcement agency must run a notice in the newspaper at least once, and give the owner 30 days after the date of publication to claim the property. G.S. 15-12(b) makes an exception for bicycles that can be sold after being unclaimed for 60 days.

BILL ANALYSIS: Senate Bill 1392 would permit law enforcement agencies in Mecklenburg County to dispose of all unclaimed property, bicycles or other property, if the property is unclaimed after 60 days from the date of seizure, confiscation, or receipt. The current notice provisions would continue to apply.

The bill is effective when it becomes law and applies to property received on or after that date.

*Modified from original by O. Walker Reagan

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 1392 A BILL TO BE ENTITLED AN ACT TO REDUCE THE REQUIRED STORAGE PERIOD FOR UNCLAIMED PROPERTY HELD BY LAW ENFORCEMENT IN MECKLENBURG COUNTY.

☒ 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 1

SENATE BILL 662

Short Title:	Orange Open Burning Regulation.	(Local)
Sponsors:	Senators Kinnaird and Lee.	
Referred to:	State and Local Government.	

March 22, 2001

A BILL TO BE ENTITLED

AN ACT AMENDING AN ACT AUTHORIZING ORANGE COUNTY TO REGULATE OPEN BURNING.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2000-107 reads as rewritten:

"Section 3. Section 1 of this act applies to Carteret, Orange, and Pender Counties only. Section 2 of this act applies to Orange County ~~only, except that it does not apply to Carr and Cheeks Precincts.~~only."

SECTION 2. 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 662 A BILL TO BE ENTITLED AN ACT AMENDING AN ACT AUTHORIZING ORANGE COUNTY TO REGULATE OPEN BURNING.

☒ 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 2

SENATE BILL 712
House Committee Substitute Favorable 7/10/02

Short Title: District Judge 8-Year Terms. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 10. District Courts.**

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of ~~four~~ eight years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide general election, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment providing eight-year terms for District Court Judges, the same as for all other judges of the General Court of Justice."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. Section 1 applies beginning with District Court Judges elected in the 2002 general election. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 4. G.S. 7A-140 reads as rewritten:

"Article 14.

"District Judges.

"**§ 7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of ~~four~~ eight years, beginning on the first Monday in December following his election.

Each district judge shall devote his full time to the duties of his office. He shall not practice law during his term, nor shall he during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 5. G.S. 163-1 is amended in the table by rewriting the "TERM OF OFFICE" entries for Judges of the District Courts to read: "Eight years".

SECTION 6. Sections 4 and 5 of this act shall take effect only upon approval of the voters of the constitutional amendment set forth in Section 1 of this act. If the constitutional amendment proposed in that section is approved by the voters, Sections 4 and 5 of this act shall become effective at the same time as the constitutional amendment.

SECTION 7. This act is effective when it becomes law.

SENATE BILL 712:
District Court Judge 8-Year Term.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	August 20, 2001	**Summary by:**	Frank W. Folger, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***Senate Bill 712 would amend the NC Constitution to provide that the term for district court judges will be increased from four years to eight years.***

CURRENT LAW: Currently Section 10 of Article IV of the NC Constitution provides that judges of the district court shall serve for four-year terms and shall be elected in the districts in which they reside. Justices of the Supreme Court and judges of the Court of Appeals and the Superior Courts are elected for eight-year terms.

BILL ANALYSIS: Senate Bill 712 would authorize a referendum on the next statewide general election to amend the constitution to provide that the term of office for district court judges will be for eight years. If approved the amendment would become effective for district court judges elected beginning with the 2002 general election. The bill also makes other conforming statutory changes that reflect the change in the length of the term to become effective only if the constitutional amendment is approved.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

Differences from the 1st Edition:

- The 1st Edition had provided that the referendum ballot would have been submitted to voters during the next primary elections (originally set for April 2002). The 2nd Edition provides that the referendum, instead, would be submitted at the next general election.
- The Second Edition includes language (p. 2, l. 2) in the ballot referendum indicating that all judges of the General Court of Justice other than District Court Judges already have eight-year terms. The 1st Edition did not include that language.

S712-SMSO-001

O. Walker Reagan, counsel to the Senate Judiciary I Committee, contributed substantially to this summary.

House Judiciary I Committee

August 27, 2002

Minutes

The House Judiciary I Committee met on Tuesday, August 27, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Arnold, Insko, Sutton and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Under consideration by the committee was Senate Bill 712, AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES, (Attachment III). The bill was explained and discussed during the August 20, 2002 meeting of the committee.

Representative Sutton was recognized and stated that he had spoken with the district court judges from his district who support the bill. He said that he had also spoken to several members of the public from his district about the difference between the superior court judges' eight-year terms and the district court judges' four-year terms. He said that most did not realize that superior court judges were on an eight-year rotation and that district court judges were on a four- year rotation. He further stated that he sees no problem in changing from a four-year cycle to an eight-year cycle, if that is what the public wishes to do, and that they should be given the opportunity to express this in the November election.

Representative Sutton moved a favorable report for the bill. Upon vote of the committee, the bill was given a favorable report, (Attachment IV). Representative Arnold voted against the motion.

The meeting was adjourned at 11:15.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

AUGUST 27, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 712 – DISTRICT JUDGE 8-YEAR TERMS
SENATOR RAND

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

August 27, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT RADER	N.C. ASSOC. OF DISTRICT CT. JUDGES
Michelle Frazier	NC Bar Assoc.
Letitha Wiltarow	NC State Watch

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 2

SENATE BILL 712
House Committee Substitute Favorable 7/10/02

Short Title: District Judge 8-Year Terms. (Public)

Sponsors:

Referred to:

March 28, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 10. District Courts.**

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of ~~four~~ eight years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide general election, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment providing eight-year terms for District Court Judges, the same as for all other judges of the General Court of Justice."

SECTION 3. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. Section 1 applies beginning with District Court Judges elected in the 2002 general election. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 4. G.S. 7A-140 reads as rewritten:

"Article 14.

"District Judges.

"**§ 7A-140. Number; election; term; qualification; oath.**

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of ~~four~~ eight years, beginning on the first Monday in December following his election.

Each district judge shall devote his full time to the duties of his office. He shall not practice law during his term, nor shall he during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice."

SECTION 5. G.S. 163-1 is amended in the table by rewriting the "TERM OF OFFICE" entries for Judges of the District Courts to read: "Eight years".

SECTION 6. Sections 4 and 5 of this act shall take effect only upon approval of the voters of the constitutional amendment set forth in Section 1 of this act. If the constitutional amendment proposed in that section is approved by the voters, Sections 4 and 5 of this act shall become effective at the same time as the constitutional amendment.

SECTION 7. 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(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☒ House Committee Substitute for
S.B. 712 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES.

☒ 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 Judiciary I Committee

September 4, 2002

Minutes

The House Judiciary I Committee met on Wednesday, September 4, 2002, at 10:00 a.m. in Room 1228 of the Legislative Building. Chairman Joe Hackney called the meeting to order and the following members were present: Representatives Alexander, Clary, Insko, Redwine and Walker. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Under consideration by the committee was House Bill 1785, AN ACT TO AUTHORIZE THE NORTH CAROLINA CENTER FOR MISSING PERSONS TO ACCEPT AND EXPEND PRIVATE DONATIONS FOR THE NORTH CAROLINA CHILD ALERT NOTIFICATION SYSTEM - NC CAN (AMBER ALERT), TO ESTABLISH CRITERIA TO TRIGGER AN "AMBER ALERT", TO COORDINATE THE PUBLIC AND PRIVATE SECTORS, AND TO PROVIDE FOR THE USE OF DEPARTMENT OF TRANSPORTATION CHANGEABLE MESSAGE SIGNS TO DISPLAY INFORMATION REGARDING MISSING CHILDREN, (Attachment III).

Representative Decker, one of the sponsors of the bill, was recognized to explain the bill. He said that a voluntary system called NC CAN, (North Carolina Child Alert Network), was started in the state in 1998. He said that four counties participated initially and that 14 counties now participate statewide. Representative Decker said that the bill directs law enforcement agencies to report to the North Carolina Center for Missing Persons as soon as practicable after receipt of a missing child report. Then, if certain criteria is met, the Amber Alert system will be initiated. He said that guidelines would be adopted to promote the voluntary participation of the broadcast media and that the Department of Justice would work with the center in deveoping training materials for law enforcement and for the public. The center would consult with the Department of Transportation for use of the changeable message boards. Representative Decker said that the bill would provide for the center to be allowed to accept gifts and contributions from outside sources and noted that a company had stepped forward to donate $150,000 toward this program.

Representative Redwine, also a sponsor the bill, was recognized for comment. He noted that the purpose of the bill is to expand the state's current NC CAN program. He said that a special provision has been included in the budget bill give the Department of Justice $125, 000 to begin the process of expansion of the program.

Ms. Susan Sitze, Committee Counsel, was recognized for a section-by-section review of the bill. A bill analysis, prepared by Ms. Sitze, is attached, (Attachment IV).

Mr. Gary McLeod, Crime Control and Public Safety, was recognized, and spoke in support of the bill.

Ms. Sharon Matthews, Department of Transportation, stated that DOT was in support of the legislation.

Committee discussion followed regarding the terms "missing" and "abducted."

Representataive Redwine offered an amendment, (AttachmentV), and moved its adoption. The amendment would add the words "the child is believed to have been abducted," as one of the criteria to be met when determinining whether to disseminate information on a missing child.

Mr. Eddie Caldwell, representing the North Carolina Sheriffs Association and North Carolina Law Enforcement Officers Association requested clarification of the language of the amendment. He said that it was unclear whether the program applies if the cause of the child being missing is unkown, or whether it applies only if there is reason to believe that a child has been abducted. He noted that law enforcement would be glad to follow the wishes of the legislature, but would need clarification of their responsibilites.

Ms. Sitze said that she thought the amendment would clarify that the child is believed to have been abducted as one of the criteria.

Upon vote of the members, the amendment was adopted

Representative Walker moved that the amendment be rolled into a committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment VI). A copy of the committee substitute is included in the attachments, (Attachment VII).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

SEPTEMBER 4, 2002
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1785 – NC CAN/AMBER ALERT
REPRESENTATIVES DECKER AND REDWINE

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

September 4, 2002 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tej Chaudhuri	N C Attorney General's Office
Ann Cover	BPMHL
Billy R Cameron	CCPS
Jane Davison	CCPS-Missing Persons
Rev. Dr. James B. Vien	NC Synod of the ELCA Advocacy Ministry
Kate Hunter	NC State Watch
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf. Offi. Assn
Carol Lawver	EOIS
Hal Miller	NCACCT
John Hunt	NCFPC
Shawn Matthews	DOT
[illegible]	CCPS
Robert Wilson	Sec. of State office
John McKay	GOV OFFICE
Michelle Frazier	NC Bar Assoc.
Jerry Williams	NCRA
Tom Bean	NC Enviro Defense
[illegible]	NC Music
Don Beason	The Capitol Group

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1785

Short Title:	NC CAN/Amber Alert - 2.	(Public)
Sponsors:	Representatives Decker, Redwine; Adams, Alexander, Allen, Baddour, Barefoot, Bell, Bonner, Boyd-McIntyre, Church, Coates, Cole, Cox, J. Crawford, Culpepper, Cunningham, Earle, Easterling, Edwards, Fox, Goodwin, Haire, Hall, Hensley, Hill, Hunter, Hurley, Jarrell, Justus, Lucas, McAllister, McLawhorn, Miller, Nesbitt, Nye, Owens, Redwine, Rogers, Saunders, Smith, Sutton, Tolson, Tucker, Underhill, Wainwright, Warren, Warwick, Weiss, Willingham, Womble, Wright, and Yongue.	
Referred to:	Judiciary I.	

August 28, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA CENTER FOR MISSING PERSONS TO ACCEPT AND EXPEND PRIVATE DONATIONS FOR THE NORTH CAROLINA CHILD ALERT NOTIFICATION SYSTEM – NC CAN (AMBER ALERT), TO ESTABLISH CRITERIA TO TRIGGER AN "AMBER ALERT", TO COORDINATE THE PUBLIC AND PRIVATE SECTORS, AND TO PROVIDE FOR THE USE OF DEPARTMENT OF TRANSPORTATION CHANGEABLE MESSAGE SIGNS TO DISPLAY INFORMATION REGARDING MISSING CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, or legal custodian, shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the

law enforcement agency shall notify the Center of the relevant data about the missing child."

SECTION 2. G.S. 143B-499.2 is amended by adding a new subdivision to read:

"(6a) Develop and maintain the North Carolina Child Alert Notification System (NC CAN) as created by G.S. 143B-499.7;".

SECTION 3. Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-499.7. North Carolina Child Alert Notification System established.**

(a) There is established within the North Carolina Center for Missing Persons the North Carolina Child Alert Notification System (NC CAN). The purpose of NC CAN is to provide a statewide system for the rapid dissemination of information regarding abducted children.

(b) The NC CAN System shall make every effort to disseminate information on missing children as quickly as possible when the following criteria are met:

(1) The child is 12 years of age or younger;

(2) The child is believed to be in danger of injury or death;

(3) The abduction is not known or suspected to be by a parent of the child;

(4) The child is not a runaway or voluntarily missing; and

(5) The abduction has been reported to and investigated by a law enforcement agency.

The NC CAN system may disseminate information on missing children who are ages 13 to 17 on a case by case basis, if all other criteria in subdivisions (2) through (5) of this subsection have been met, if the Center believes the dissemination of the information to be beneficial in the possible recovery of the missing child.

If the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the NC CAN System if the child is believed to be in danger of injury or death.

(c) The Center shall adopt guidelines and develop procedures for the statewide implementation of the NC CAN System and shall provide education and training to encourage radio and television broadcasters to participate in the system. The Center shall work with the Department of Justice in developing training material regarding the NC CAN System for law enforcement, broadcasters, and community interest groups.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section, when information is available that would enable motorists to assist law enforcement in the recovery of the missing child. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign.

(e) The Center shall consult with the Division of Emergency Management, in the Department of Crime Control and Public Safety, to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section.

(f) The Department of Crime Control and Public Safety, on behalf of the Center, may accept grants, contributions, devises, bequests, and gifts, which shall be kept in a separate fund and shall be used to fund the operations of the Center and the NC CAN System."

SECTION 4. Section 1 of this act becomes effective October 1, 2002. The remainder of this act is effective when it becomes law.

HOUSE BILL 1785: NC CAN/Amber Alert - 2

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Michael Decker & Rep. David Redwine
Date:	September 4, 2002		
Version:	1st Edition	**Summary by:**	Susan L. Sitze Committee Counsel

SUMMARY: ***House Bill 1785 would expand the NC Child Alert Notification System (NC CAN) to a statewide program.***

CURRENT LAW: There is currently a voluntary NC CAN program active in 14 counties. This program is run through the NC Center for Missing Persons (Center) and is similar to what is commonly known as an "AMBER Alert".

BILL ANALYSIS: **Section 1** of the bill would require law enforcement agencies to notify the Center as soon as practicable after receipt of a missing child report, if the report meets the criteria established by G.S. 143B-499.7(b).

Section 2 of the bill amends G.S. 143B-499.2 to add development and maintenance of the NC CAN system as a responsibility of the Center.

Section 3 of the bill creates a new G.S. 143B-499.7 which would codify the NC CAN system.

Subsection (a) establishes the North Carolina Child Alert Notification System (NC CAN).

Subsection (b) establishes the criteria for initiating the NC CAN system as follows:

1. The child is 12 years of age or younger;
2. The child is believed to be in danger of injury or death;
3. The abduction is not known or suspected to be by a parent of the child;
4. The child is not a runaway or voluntarily missing; and
5. The abduction has been reported to and investigated by a law enforcement agency.

The NC CAN system may also be activated for children ages 13 to 17 on a case by case basis, if all other criteria have been met and the Center believes the dissemination of information to be beneficial in the possible recovery of the missing child.

If the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the NC CAN System if the child is believed to be in danger of injury or death.

Subsection (c) directs the Center to adopt guidelines and develop procedures for the statewide implementation of the NC CAN system and to provide education and training to encourage radio and television broadcasters to participate in the system. The Center is directed to work with the Department of Justice to develop training materials for law enforcement, broadcasters and community interest groups.

Subsection (d) directs the Center to consult with the Department of Transportation to develop procedures for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established is subsection (b), when information is available that would enable

motorists to assist law enforcement in the recovery of the missing child. The Center and the Department shall develop guidelines for the content, length, and frequency of any message to be placed on overhead permanent changeable message signs.

Subsection (e) directs the Center to consult with the Division of Emergency Management to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria established in subsection (b).

Subsection (f) authorizes the Department of Crime Control and Public Safety to accept grants, contributions, devises, bequests, and gifts, on behalf of the Center, to be kept in a separate fund and used to fund the operations of the Center and the NC CAN System.

Section 4 of the bill provides that Section 1 of this act becomes effective October 1, 2002. The remainder of the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ 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 16 and 17

( ) WHICH CHANGES THE TITLE

by inserting between the lines the words: "(2) the child is believed to have been abducted." and

by renumbering the remaining subdivisions accordingly.

~~pg 2 line 23~~
~~delete "(5)" and insert "(1)"~~

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hackney** (Chair/Chairs) for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 1785 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE NORTH CAROLINA CENTER FOR MISSING PERSONS TO ACCEPT AND EXPEND PRIVATE DONATIONS FOR THE NORTH CAROLINA CHILD ALERT NOTIFICATION SYSTEM - NC CAN (AMBER ALERT), TO ESTABLISH CRITERIA TO TRIGGER AN "AMBER ALERT", TO COORDINATE THE PUBLIC AND PRIVATE SECTORS, AND TO PROVIDE FOR THE USE OF DEPARTMENT OF TRANSPORTATION CHANGEABLE MESSAGE SIGNS TO DISPLAY INFORMATION REGARDING MISSING CHILDREN.

☐ 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 1785
PROPOSED COMMITTEE SUBSTITUTE H1785-PCS5459-SA-48

Short Title: NC CAN/Amber Alert - 2. (Public)

Sponsors:

Referred to:

August 28, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA CENTER FOR MISSING PERSONS TO ACCEPT AND EXPEND PRIVATE DONATIONS FOR THE NORTH CAROLINA CHILD ALERT NOTIFICATION SYSTEM – NC CAN (AMBER ALERT), TO ESTABLISH CRITERIA TO TRIGGER AN "AMBER ALERT", TO COORDINATE THE PUBLIC AND PRIVATE SECTORS, AND TO PROVIDE FOR THE USE OF DEPARTMENT OF TRANSPORTATION CHANGEABLE MESSAGE SIGNS TO DISPLAY INFORMATION REGARDING MISSING CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-499.1 reads as rewritten:

"**§ 143B-499.1. Dissemination of missing persons data by law-enforcement agencies.**

A law-enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, or legal custodian, shall immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center.

If the report involves a missing child and the report meets the criteria established in G.S. 143B-499.7(b), as soon as practicable after receipt of the report, the law enforcement agency shall notify the Center of the relevant data about the missing child."

SECTION 2. G.S. 143B-499.2 is amended by adding a new subdivision to read:

"(6a) Develop and maintain the North Carolina Child Alert Notification System (NC CAN) as created by G.S. 143B-499.7;".

SECTION 3. Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-499.7. North Carolina Child Alert Notification System established.**

(a) There is established within the North Carolina Center for Missing Persons the North Carolina Child Alert Notification System (NC CAN). The purpose of NC CAN is to provide a statewide system for the rapid dissemination of information regarding abducted children.

(b) The NC CAN System shall make every effort to disseminate information on missing children as quickly as possible when the following criteria are met:

(1) The child is 12 years of age or younger;

(2) The child is believed to have been abducted;

(3) The child is believed to be in danger of injury or death;

(4) The abduction is not known or suspected to be by a parent of the child;

(5) The child is not a runaway or voluntarily missing; and

(6) The abduction has been reported to and investigated by a law enforcement agency.

The NC CAN System may disseminate information on missing children who are ages 13 to 17 on a case-by-case basis, if all other criteria in subdivisions (2) through (6) of this subsection have been met, if the Center believes the dissemination of the information to be beneficial in the possible recovery of the missing child.

If the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the NC CAN System if the child is believed to be in danger of injury or death.

(c) The Center shall adopt guidelines and develop procedures for the statewide implementation of the NC CAN System and shall provide education and training to encourage radio and television broadcasters to participate in the System. The Center shall work with the Department of Justice in developing training material regarding the NC CAN System for law enforcement, broadcasters, and community interest groups.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section, when information is available that would enable motorists to assist law enforcement in the recovery of the missing child. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign.

(e) The Center shall consult with the Division of Emergency Management, in the Department of Crime Control and Public Safety, to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria established in subsection (b) of this section.

(f) The Department of Crime Control and Public Safety, on behalf of the Center, may accept grants, contributions, devises, bequests, and gifts, which shall be kept in a separate fund and shall be used to fund the operations of the Center and the NC CAN System."

SECTION 4. Section 1 of this act becomes effective October 1, 2002. The remainder of this act is effective when it becomes law.

House Judiciary I Committee

Minutes

October 3, 2002

The House Judiciary I Committee met on Thursday, October 3, 2002 in the House Chamber around the desk of the Chairman, Representative Joe Hackney, with a quorum present. Chairman Hackney called the meeting to order.

Representative Ronnie Sutton moved that all bills remaining in the box for which there is not a request pursuant to House Rule 36(a) be reported out with a recommendation that they be postponed indefinitely. The motion passed, and the meeting was adjourned.

Representative Joe Hackney
Chairman

Pearl G. Honeycutt
Acting Committee Clerk

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Hackney, Chair for the Committee on **JUDICIARY I**

Reports the following bills
☒ With an indefinite postponement report.

HOUSE BILL	SHORT TITLE
# 526	Abortion-Parental Consent Notarized
# 676	Victims/Rights Provisions
# 728	Display of American Flag
# 798	No Profit From Crime
# 859	Repeat Misdemeanor Larceny or Shoplifting is Felony
# 1094	Correct Term of Judgeship
# 1127	DNA Sample/Felony Convictions & Insane Defense
# 1177	Require Experience for Death Penalty Cases
# 1260	Parental Rights & Child Protection Act
# 1293	District Court District 18 Judges' Residency

SENATE BILL	
# 390	Physician-Assisted Suicide/Education/Crime
# 742	Local Government Tort Liability
# 819	Certain Probation Violations to Court of Appeals
# 961	Driving While License Revoked Flexibility

Juanita Coley (Rep. Sutton)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:21 AM
To: Juanita Coley (Rep. Sutton)
Subject: Rep Sutton HB 141

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Sutton**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Sutton**
Bill Sponsor

SUBJECT: **HB 141, No Death Penalty/Mentally Retarded** (Short Title)

I request that HB 141 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10-3-02 Date

Janette Lee (Rep. Nesbitt)

[redacted]m: Emily Reynolds (Rep. Hackney)
[redacted]nt: Wednesday, October 02, 2002 11:03 AM
To: Janette Lee (Rep. Nesbitt)
Subject: Rep Nesbitt HB 383

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Nesbitt**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a [redacted]d form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This [redacted]may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Nesbitt**
Bill Sponsor

SUBJECT: **HB 383, Local Government Tort Liability** (Short Title)

I request that HB 383 not be considered by the Committee on Judiciary I.

Martha Nesbitt
(Sponsor's Signature)

10-2-02 Date

[redacted]

Sally Gillis (Rep. Rogers)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:07 AM
To: Sally Gillis (Rep. Rogers)
Subject: Rep Rogers HB 451

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Rogers**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Rogers**
Bill Sponsor

SUBJECT: **HB 451, Amend NC Emergency Management Laws** (Short Title)

I request that HB 451 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10-3-02 Date

Joanna Mills (Rep. Setzer)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:10 AM
To: Joanna Mills (Rep. Setzer)
Subject: Rep Setzer HB 631

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Setzer**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 Hackney**

FROM: **Representative Setzer**
Bill Sponsor

SUBJECT: **HB 631, Autopsy Photos Not Public Record** (Short Title)

I request that HB 631 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10/02/02 Date

10/2/2002

Anne Misenheimer (Rep. Baker)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 9:56 AM
To: Anne Misenheimer (Rep. Baker)
Subject: Baker HB 649

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Baker**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Baker**
Bill Sponsor

SUBJECT: **HB 649, Authorize Emergency Appropriation** (Short Title)

I request that HB 649 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Redwine**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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 Hackney**

FROM: **Representative Redwine**
Bill Sponsor

SUBJECT: **HB 747, Make ESC Surtax Permanent** (Short Title)

I request that HB 747 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

_____ Date

Pattie Fleming (Rep. Starnes)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:13 AM
To: Pattie Fleming (Rep. Starnes)
Subject: Rep Starnes HB 792

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Starnes**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Starnes**
Bill Sponsor

SUBJECT: **HB 792, County-Wide Zoning/ETJ** (Short Title)

I request that HB 792 not be considered by the Committee on Judiciary I.

Edgar Starnes
(Sponsor's Signature)

10 2-02 Date

Pam Evans (Rep. Insko)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:45 AM
To: Pam Evans (Rep. Insko)
Subject: Rep Inkso HB 932

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Insko**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 Hackney**

FROM: **Representative Insko**
Bill Sponsor

SUBJECT: **HB 932, Orange Open Burning Regulation** (Short Title)

I request that HB 932 not be considered by the Committee on Judiciary I.

Vera Insko
(Sponsor's Signature)

10-3-02
Date

Joy Feagin (Rep. Morris)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:51 AM
To: Joy Feagin (Rep. Morris)
Subject: Rep Morris HB 1012

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Morris**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Morris**
Bill Sponsor

SUBJECT: **HB 1012, Physician Assisted Suicide Unlawful** (Short Title)

I request that HB 1012 not be considered by the Committee on Judiciary I.

Mia Morris
(Sponsor's Signature)

20 Oct 2002 Date

Alice Falcone (Rep. Ellis)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:26 AM
To: Alice Falcone (Rep. Ellis)
Subject: Rep Ellis HB 1097

MEMORANDUM

DATE: **October 2. 2002**

TO: **Representative Ellis**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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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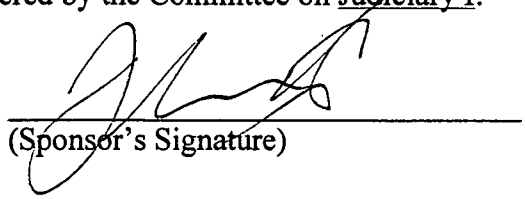
MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Ellis**
Bill Sponsor

SUBJECT: **HB 1097, Sex Offenses/Amend Plea Bargain Laws** (Short Title)

I request that HB 1097 not be considered by the Committee on Judiciary I.



(Sponsor's Signature)

10/2/02 Date

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Hackney**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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 Hackney**

FROM: **Representative Hackney**
Bill Sponsor

SUBJECT: **HB 1116, Death Penalty Moratorium** (Short Title)

I request that HB 1116 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10/2/02 Date

Debbie Turner (Rep. Sexton)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:11 AM
To: Debbie Turner (Rep. Sexton)
Subject: Rep Sexton HB 1141

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Sexton**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 i, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Sexton**
Bill Sponsor

SUBJECT: **HB 1141, Cartways** (Short Title)

I request that HB 1141 not be considered by the Committee on Judiciary I.

Wayne Sexton
(Sponsor's Signature)

10/2/02 Date

Lin Threatt (Rep. Blue)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:00 AM
To: Lin Threatt (Rep. Blue)
Subject: Rep Blue HB 1183

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Blue**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a prepared form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Blue**
Bill Sponsor

SUBJECT: **HB 1183, Correct Term of Judgeship** (Short Title)

I request that HB 1183 not be considered by the Committee on Judiciary I.

Dan Blue
(Sponsor's Signature)

10-3-02 Date

Janette Lee (Rep. Nesbitt)

[redacted]: Emily Reynolds (Rep. Hackney)
[redacted]: Wednesday, October 02, 2002 10:53 AM
To: Janette Lee (Rep. Nesbitt)
Subject: Rep Nesbitt HB 1224

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Nesbitt**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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.**

I[redacted] would like to request that your bill not be considered by the Committee on Judiciary i, for your convenience, a p[redacted]d form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Nesbitt**
Bill Sponsor

SUBJECT: **HB 1224, Construction Contracts/Retainage Reform** (Short Title)

I request that HB 1224 not be considered by the Committee on Judiciary I.

Martha Nesbitt
(Sponsor's Signature)

[redacted]0-2-02 Date

Janette Lee (Rep. Nesbitt)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:58 AM
To: Janette Lee (Rep. Nesbitt)
Subject: Rep Nesbitt HB 1225

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Nesbitt**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 i, for your convenience, a pre-printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

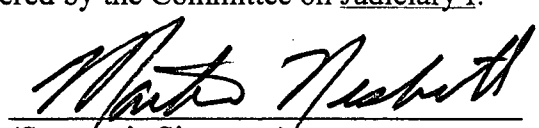
MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Nesbitt**
Bill Sponsor

SUBJECT: **HB 1225, Open Meetings Pending Litigation** (Short Title)

I request that HB 1225 not be considered by the Committee on Judiciary I.



(Sponsor's Signature)

10-2-02 Date

Janette Lee (Rep. Nesbitt)

[redacted]: Emily Reynolds (Rep. Hackney)
[redacted]: Wednesday, October 02, 2002 11:02 AM
To: Janette Lee (Rep. Nesbitt)
Subject: Rep Nesbitt HB 1321

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Nesbitt**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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.**

I[redacted] would like to request that your bill not be considered by the Committee on Judiciary I, for your convenience, a p[redacted]d form is included at the bottom of this page. Please complete, sign and return the form to Room 2207. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Representative Hackney**

FROM: **Representative Nesbitt**
Bill Sponsor

SUBJECT: **HB 1321, Immunity for City/Public Safety** (Short Title)

I request that HB 1321 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

[redacted]10-2-02 Date

Joyce Langdon (Rep. Harrington)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 10:38 AM
To: Joyce Langdon (Rep. Harrington)
Subject: Rep Harrington HB 1351

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Harrington**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2202. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Harrington**
Bill Sponsor

SUBJECT: **HB 1351, Two Strikes--You're Out** (Short Title)

I request that HB 1351 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10/2/02 Date

Juanita Coley (Rep. Sutton)

From: Emily Reynolds (Rep. Hackney)
Sent: Wednesday, October 02, 2002 11:22 AM
To: Juanita Coley (Rep. Sutton)
Subject: Rep Sutton HB 1553

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Sutton**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on JUDICIARY I**

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 Hackney**

FROM: **Representative Sutton**
Bill Sponsor

SUBJECT: **HB 1553, Waive Jury Trial** (Short Title)

I request that HB 1553 not be considered by the Committee on Judiciary I.

(Sponsor's Signature)

10-3-02 Date

MEMORANDUM

DATE: **October 2, 2002**

TO: **Representative Mitchell**

FROM: **Representative Hackney**

SUBJECT: **Bills Pending in the Committee on Judiciary I**

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 I, for your convenience, a printed form is included at the bottom of this page. Please complete, sign and return the form to Room 2202. This form may not be e-mailed because it requires the sponsor's signature.

MEMORANDUM

TO: **Representative Hackney**

FROM: **Representative Mitchell**
Bill Sponsor

SUBJECT: **HB 1562, "No Hush Money/Severance Pay"** (Short Title)

I request that HB 1562 not be considered by the Committee on Judiciary I.

W. F. Mitchell
(Sponsor's Signature)

10/3/02 Date