2003-2004

HOUSE
JUDICIARY I

COMMITTEE
MINUTES

House Judiciary I

Representative Joe Hackney
Chairman

Representative Deborah Ross
Vice Chairman

2003 Session

Emily Reynolds Freeman
Committee Assistant

House Judiciary I

2003 Session

Staff

Susan Sitze, Committee Counsel
Erika Churchill, Committee Counsel
Tim Hovis, Committee Counsel

Emily Reynolds Freeman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY I COMMITTEE

2003 – 2004 SESSION



Representative Joe Hackney
Chair



Rep. Deborah Ross
Vice chair



Rep. Martha Alexander



Rep. Russell Capps



Rep. Debbie Clary



Rep. Leo Daughtry



Rep. Jim Harrell



Rep. Verla Insko



Rep. Paul Miller



Rep. Wayne Sexton



Rep. Roger West



Rep. Steve Wood

HOUSE JUDICIARY I COMMITTEE

2003-2004 SESSION

MEMBERSHIP

NAME	OFFICE	PHONE	LEGISLATIVE ASSISTANT
REPRESENTATIVE JOE HACKNEY, CHAIRMAN	2207	733-5752	EMILY FREEMAN
REPRESENTATIVE DEBORAH ROSS, VICE CHAIR	2223	733-5773	DELORES LEDFORD
REPRESENTATIVE MARTHA ALEXANDER	2208	733-5807	ANN FAUST
REPRESENTATIVE RUSSELL CAPPS	501	733-5903	NANCY FOX
REPRESENTATIVE DEBBIE CLARY	303B	715-2002	SHIRLEY WINSTEAD
REPRESENTATIVE LEO DAUGHTRY	1209	733-5605	BERNICE BULLARD
REPRESENTATIVE JIM HARRELL	403	715-1883	TED BRAUN
REPRESENTATIVE VERLA INSKO	2121	733-7208	PAM EVANS
REPRESENTATIVE PAUL MILLER	640	733-5872	ERYN GEE
REPRESENTATIVE WAYNE SEXTON	609	733-5607	DEBBIE TURNER
REPRESENTATIVE ROGER WEST	1004	733-5859	LINDA C. JOHNSON
REPRESENTATIVE STEVE WOOD	2119	733-5771	WENDY MILLER

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	2/27	3/4	3/11	3/13	3/18	3/20	3/25	4/1	4/3	4/8	4/10	4/22	4/22 p	4/23	4/24
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Ross, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Alexander	✓	✓	✓	✓	✓	✓	✓	✓	ex.	✓	✓	ex	✓	✓	ex.
Representative Capps	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Representative Clary		ex.													
Representative Daughtry	ex	ex	✓		✓	✓	✓	✓	✓	✓	ex.	✓	✓		✓
Representative Harrell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Representative Insko	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	ex.	✓	✓	✓	✓
Representative Miller	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
Representative Sexton			✓	✓	✓		✓	✓	✓	✓		✓		✓	✓
Representative West	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Representative Wood	ex.	✓	✓		✓	✓	✓	✓		✓		✓			✓
Rep. Brubaker, Ex-officio															
Rep. Culpepper, Ex-officio															
Rep. Cunningham, Ex-officio		✓						✓							
Rep. Eddins, Ex-officio															

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE

(Name of Committee)

DATES	4/24 P	4/28	4/29	5/8	5/13	5/15	5/20	5/22	5/27	5/29	6/3	6/10			
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
Representative Ross, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
Representative Alexander	✓	✓		✓	✓		✓		✓			✓			
Representative Capps	✓	✓	✓		✓	✓	✓	✓	✓	✓					
Representative Clary			✓								✓				
Representative Daughtry	✓	✓	✓			✓					✓				
Representative Harrell		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓			
Representative Insko	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓			
Representative Miller			✓	✓	✓	✓	✓		✓	✓	✓	✓			
Representative Sexton	✓		✓		✓		✓	✓			✓	✓			
Representative West		✓	✓		✓		✓				✓	✓			
Representative Wood	✓		✓			✓		✓	✓						
Rep. Brubaker, Ex-officio															
Rep. Culpepper, Ex-officio															
Rep. Cunningham, Ex-officio															
Rep. Eddins, Ex-officio															

2003-2004 Biennium

Leg. Day: H-103/S-103

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0011	Stam	BAN SEXUALLY EXPLICIT CONDUCT.	*H	Ref To Com On Rules, Calendar, and Operations of the House	02-13-03	03-04-03
H0027	Rhodes	EXPAND DNA DATABANK/ ALL FELONIES.	H	Ref To Com On Judiciary I	02-17-03	
H0033	Luebke	PRIVATE PROSECUTION/ FELONY OFFENSES.	H	Ref To Com On Judiciary I	02-18-03	
H0079=	Alexander	DNA REGISTRY.	*HR	Ch. SL 2003-376	02-25-03	04-08-03
H0379	Bell	EDUCATIONAL CONDITIONS TO PUNISHMENT.	*H	Ref To Com On Education/Higher Education	03-10-03	03-26-03
H0408	Hackney	AMEND SECRET PEEPING LAW.	*HR	Ch. SL 2003-303	03-12-03	03-27-03
H0461	Alexander	INTERPRETER LICENSURE EFFECTIVE DATE.	HR	Ch. SL 2003-56	03-13-03	03-20-03
H0471=	Crawford	CDL CHANGES/STUDY MOPED TAG IDENTIFICATION.	*H	Re-ref Com On Appropriations/ Base Budget	04-30-03	05-15-03
H0475	Alexander	REGISTRATION OF BIRTH & DEATH CERTIFICATES.	HR	Ch. SL 2003-60	03-13-03	03-20-03
H0509=	Alexander	FAILURE TO APPEAR/ CITATION.	H	Ref To Com On Judiciary I	03-17-03	
H0562	Alexander	CHARLOTTE PHOTO SPEED-MEASURING SYSTEMS.	*HR	Ch. SL 2003-280	03-20-03	04-28-03
H0676	Luebke	DURHAM BENEFITS.	H	Ref To Com On Judiciary I	03-26-03	
H0826=	Insko	AMEND MH CONFIDENTIALITY STATUTES.	*HR	Ch. SL 2003-313	04-09-03	04-22-03
H0830	Hilton	ABORTION-PARENTAL CONSENT NOTARIZED.	H	Re-ref Com On Rules, Calendar, and Operations of the House	04-02-03	04-29-03
H0840=	Alexander	CLARIFY DEFINITION OF PROTECTIVE ORDER.	H	Ref To Com On Judiciary I	04-02-03	
H0846=	Alexander	ILLEGAL CHILD CARE FACILITIES.	H	Ref To Com On Judiciary I	04-03-03	
H0877	Hackney	CLARIFY POSTSEPARATION SUPPORT LAWS.	H	Ref To Com On Judiciary I	04-07-03	
H0879	Crawford	STATE PERSONNEL ACT CHANGES.	H	Re-ref Com On Judiciary I	04-29-03	
H0880=	Justus	DWI BLOOD TEST RESULT-DIRECTLY TO CLERK.	*H	Re-ref Com On Judiciary I	04-23-03	
H0899=	Gibson	SOLICITING SUTA DUMPING A FELONY.	H	Ref To Com On Judiciary I	04-07-03	
H0911	Eddins	NO PROFIT FROM CRIME.	H	Re-ref Com On Judiciary IV	04-08-03	05-07-03
H0950	Hackney	JUVENILE COMMITMENT TO DJJDP.	*HR	Ch. SL 2003-53	04-08-03	04-29-03
H0951	Hackney	CREATE CIVIL NO-CONTACT PROTECTIVE ORDERS.	*H	Ref To Com On Judiciary I	04-08-03	04-30-03
H0952	Hackney	CLARIFYING CHANGE/ FAMILY LAW	HR	Ch. SL 2003-61	04-08-03	04-22-03

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

2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ARBITRATION ACT.				
[redacted]992	Insko	DEBT SETOFF FOR HOSPITAL SERVICES.	*H	Re-ref Com On Appropriations	04-09-03	04-23-03
H0999=	Hackney	TONER/INKJET CARTRIDGES.	*HR	Ch. SL 2003-386	04-10-03	04-23-03
H1018	Allred	DEFENDANTS COSTS IN CONDEMNATION AWARDS.	H	Ref To Com On Judiciary I	04-10-03	
H1037	Luebke	AMEND JUVENILE LAW.	*HR	Ch. SL 2003-297	04-10-03	04-29-03
H1040=	Sauls	TONER/INKJET CARTRIDGES.	H	Ref To Com On Judiciary I	04-10-03	
H1044=	Hackney	SEXUAL BATTERY.	H	Ref To Com On Judiciary I	04-10-03	
H1046	Hackney	AGGRESSIVE DRIVING.	*H	Ref To Com On Judiciary I	04-10-03	04-23-03
H1047	Hackney	ABOLISH ALIENATION OF AFFECTION/CRIM. CONV.	H	Re-ref Com On Rules and Operations of the Senate	04-10-03	04-28-03
H1048	Ross	JUVENILE CODE REVISIONS/CT. IMPROVEMENT PROJ.	*HR	Ch. SL 2003-140	04-10-03	04-24-03
H1106	Starnes	FETAL HOMICIDE.	H	Ref To Com On Judiciary I	04-10-03	
H1125	Hackney	UNIFORM TERMS FOR JUDGES.	H	Ref To Com On Judiciary I	04-10-03	
H1126	Hackney	COLLABORATIVE LAW PROCEDURES/FAMILY LAW.	*HR	Ch. SL 2003-371	04-10-03	04-23-03
H1186	Luebke	SPEEDING BY LAW ENFORCEMENT OFFICERS.	H	Ref To Com On Judiciary I	04-10-03	
[redacted]199=	Luebke	MORATORIUM ON EXECUTIONS FOR TWO YEARS.	H	Ref To Com On Judiciary I	04-10-03	
H1219	Hackney	CLARIFY DEF. OF DIVISIBLE PROPERTY/ EQU. DIST.	H	Ref To Com On Judiciary II	04-10-03	04-24-03
H1325	Gibson	LINE-ITEM VETO.	H	Ref To Com On Judiciary I	05-15-03	
S0052	Daniel G. Clodfe	CLARIFY ALLOWANCE OF COURT COSTS.	*H	Ref To Com On Judiciary I	05-01-03	
S0326=	David W. Hoyle	DETERRING SUTA DUMPING.	*HR	Ch. SL 2003-67	04-24-03	05-12-03
S0390	Fletcher L. Hart	MODERNIZE JUDGMENT DOCKETING LAWS.	H	Ref To Com On Judiciary I	04-15-03	
S0394	Tony Rand	EQU. DIS. CLAIM SURVIVE DEATH SPOUSE/ LIMIT.	*HR	Ch. SL 2003-168	04-17-03	05-13-03
S0440=	Daniel G. Clodfe	FAILURE TO APPEAR/ CITATION.	HR	Ch. SL 2003-15	03-31-03	04-03-03
S0449	Joe Sam Queen	EVIDENCE-DWI BLOOD WITHDRAWAL VALID.	*HR	Ch. SL 2003-95	04-29-03	05-13-03
S0539	Tony Rand	STATE BAR AMENDMENTS.	*HR	Ch. SL 2003-116	04-08-03	05-13-03
S0619=	Tom Apodaca	DWI BLOOD TEST RESULT-DIRECTLY TO CLERK.	*HR	Ch. SL 2003-104	04-22-03	05-15-03
S0629	Daniel G. Clodfe	CLARIFY SUBORDINATION AGREEMENT REQUIREMENTS.	*HR	Ch. SL 2003-219	04-24-03	05-27-03

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0630=	Daniel G. Clodfe	CLARIFY DEFINITION OF PROTECTIVE ORDER.	*HR	Ch. SL 2003-107	04-16-03	05-12-03
S0708	Fern Shubert	FIRE DEPT. CRIM. BACKGROUND CHECKS.	*HR	Ch. SL 2003-182	04-29-03	05-27-03
S0718	Kay R. Hagan	AMEND DOMESTIC VIOLENCE LAWS/TEMP. CUSTODY.	*H	Ref To Com On Judiciary I	05-01-03	
S0877=	William R. Purce	CHILD CARE FACILITIES/ PENALTIES.	*HR	Ch. SL 2003-192	05-01-03	05-20-03
S0912=	Daniel G. Clodfe	SEXUAL BATTERY.	*HR	Ch. SL 2003-252	04-24-03	05-22-03
S0916	Daniel G. Clodfe	PREVENT PERSONAL AND WORKPLACE VIOLENCE.	*H	Re-ref Com On Judiciary I	05-05-03	
S0919	Tony Rand	HOMICIDE PREVENTION ACT/DOMESTIC VIOLENCE.	*HR	Ch. SL 2003-410	05-01-03	05-07-03
S0925	Tony Rand	STRENGTHEN SECURITY FRAUD ENFORCEMENT LAWS.	*HR	Ch. SL 2003-413	04-29-03	06-04-03
S1011	Philip E. Berger	HEALTH CARE PROVIDER LIENS.	*HR	Ch. SL 2003-309	04-29-03	06-11-03

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'*' 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

2003 Session

House Bill 11	February 27 and March 4
House Bill 27	February 27 and April 8
House Bill 33	March 11
House Bill 79	February 27 and April 8
House Bill 379	March 20 and March 25
House Bill 408	March 13, 18 and 20
House Bill 461	March 20
House Bill 471	May 15
House Bill 475	March 20
House Bill 562	April 1, 22 am, 23 and 24 pm
House 826	April 22 am
House Bill 846	April 24 pm
House Bill 899	April 10
House Bill 950	April 10, 24 am and 28
House Bill 951	April 24 pm, 28 and 29
House Bill 952	April 10 and 22 am
House Bill 992	April 23
House Bill 999	April 22 am and 22 pm
House Bill 1037	April 24 am, 28 and 29

House Bill 1040	April 22 am and 22 pm
House Bill 1046	April 23
House Bill 1047	April 24 pm
House Bill 1048	April 22 am and 23
House Bill 1125	April 28
House Bill 1126	April 23
House Bill 1219	April 24 am
Senate Bill 326	May 8
Senate Bill 394	May 13
Senate Bill 440	April 3
Senate Bill 449	May 13
Senate Bill 539	May 13
Senate Bill 619	May 15
Senate Bill 629	May 27
Senate Bill 630	May 8
Senate Bill 708	May 20 and 27
Senate Bill 877	May 20
Senate Bill 912	May 22
Senate Bill 925	May 29 and June 3
Senate Bill 1011	June 10

Chronological Order of Consideration

February 27, 2003	House Bill 11 House Bill 27 House Bill 79
March 4, 2003	House Bill 11
March 11, 2003	House Bill 33
March 13, 2003	House Bill 408
March 18, 2003	House Bill 408
March 20, 2003	House Bill 379 House Bill 408 House Bill 461 House Bill 475
March 25, 20203	House Bill 379
April 1, 2003	House Bill 562
April 3, 2003	Senate Bill 440
April 8, 2003	House Bill 79
April 10, 2003	House Bill 899 House Bill 950 House Bill 952
April 22, 2003 am	House Bill 562 House Bill 826 House Bill 952 House Bill 999 House Bill 1040 House Bill 1048
April 22, 2003 pm	House Bill 999
April 23, 2003	House Bill 562 House Bill 992 House Bill 1046

April 23, 2003	House Bill 1048
	House Bill 1126
April 24, 2003 am	House Bill 950
	House Bill 1037
	House Bill 1219
April 24, 2003 pm	House Bill 562
	House Bill 846
	House Bill 951
	House Bill 1047
April 28, 2003	House Bill 950
	House Bill 951
	House Bill 1037
	House Bill 1125
April 29, 2003	House Bill 951
	House Bill 1037
May 8, 2003	Senate Bill 326
	Senate Bill 630
May 13, 2003	Senate Bill 394
	Senate Bill 449
	Senate Bill 539
May 15, 2003	House Bill 471
	Senate Bill 619
May 20, 2003	Senate Bill 708
	Senate Bill 877
May 22, 2003	Senate Bill 912
May 27, 2003	Senate Bill 629
	Senate Bill 708
May 29, 2003	Senate Bill 925
June 3, 2003	Senate Bill 925
June 10, 2003	Senate Bill 1011

House Judiciary I

2003 Session

MINUTES

House Judiciary I Committee

February 27, 2003

Minutes

The House Judiciary I Committee held its first meeting of the Session on Thursday, February 27, 2003 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, Capps, Harrell, Insko, Miller, Ross and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney introduced Emily Reynolds Freeman, Committee Assistant and introduced the staff members who will be serving as Committee Counsel to the committee. Ms. Susan Sitze, Ms. Erika Churchill and Mr. Tim Hovis made brief comments to the committee. Each committee member was recognized and offered a brief introduction.

Chairman Hackney stated that the sponsors would briefly explain each of the bills, but that no action would be taken during the meeting.

Representative Stam was recognized to explain House Bill 11, AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE, (Attachment III). Representative Stam spoke briefly regarding why he felt the statutes should be repealed and that it was designed to clean out statutes that have already been declared unconstitutional. He stated that the repeal includes local liquor statutes, a campaign finance statute, terms for court of appeals judges statute, and a property statute regarding abandoned railroads that have been declared unconstitutional.

Representative Rhodes was recognized for an explanation of House Bill 27, AN ACT TO AMEND THE LAW REGARDING THE STATE'S DNA DATABASE AND DATABANK 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, (Attachment IV). Representative Rhodes said that the bill would provide that a DNA sample shall be taken from any person who is convicted of any felony, both violent or non-violent or is found not guilty of a felony by reason of insanity. He said that the current statute requires only that individuals convicted of a felony of a violent nature submit a DNA sample to be logged into a database. He further stated that the bill also includes stalking and assaults on handicapped persons. Representative Rhodes noted that in addition to being a tool for

law enforcement to identify suspects, it is also a bill to protect persons who have been wrongfully accused of a crime.

Representative Alexander was recognized to explain House Bill 79, AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, (Attachment V). Representative Alexander said that the arresting law enforcement officer would have the duty to obtain the DNA sample and forward it to a laboratory for analysis and testing and that it would not be taken with any unnecessary force or unreasonable manner.

Chairman Hackney stated that the Attorney General's office would like to have the opportunity to be heard regarding the subject of DNA. He also suggested that the sponsors request fiscal notes for their bills.

The meeting was adjourned at 10:40 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, FEBRUARY 27, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 11 – REPEAL UNCONSTITUTIONAL STATUTES
REPRESENTATIVE STAM

HOUSE BILL 27 – EXPAND DNA DATABANK/ALL FELONIES
REPRESENTATIVE RHODES

HOUSE BILL 33 – PRIVATE PROSECUTION/FELONY OFFENSES
REPRESENTATIVE LUEBKE

HOUSE BILL 79 – DNA REGISTRY
REPRESENTATIVE ALEXANDER

ATTACHMENT II

VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee

February 27, 2003 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Greg McLeod	AG
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
Mark Osborne	AOC
Michelle Frazier	NC Bar Assn
Peg Dorer	NC Conference of DAs
Jeff Hunt	NC Conf of DAs pres. elect
Tracy Little	DOC
Mildred Spearman	DOC
Mary Thomsen	REBIC
John McHugh	GOV OFFICE
Anne Dunn	NCAWA
Patricia A. Yancey	ACLU
Chris Nichols	Hunton & Williams
DAVID BARNES	Poyner & Spruill LLP
Steve Woodson	NC Farm Bureau
Stacy Flannery	NCHCFA
Karl Pully	NCATL
Duke Chen	Intern
Brad Dixon	Intern
[illegible]	NCRA
BILL SCOGGIN	KENNEDY COVINGTON
Jeu-Ann Lee	NCPA
Crissie Porter	Smith Anderson
HUGH WILSON	NCHA
Seth Jaffe	ACLU-NC
Patricia Camp	ACLU

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 11

Short Title:	Repeal Unconstitutional Statutes.	(Public)
Sponsors:	Representatives Stam; Culp and Pate.	
Referred to:	Judiciary I.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.12A is repealed.

SECTION 2. S.L. 1997-182 is repealed. This also repeals G.S. 18B-1006(l).

SECTION 3. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.
b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

~~(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:~~

~~a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.~~
~~b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.~~
~~c. Operates ABC stores.~~
~~d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.~~

~~This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.~~"

SECTION 4. G.S. 18B-1006(j)(4) is repealed.

SECTION 5. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General

Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. ~~Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in § 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 6. G.S. 1-44.2(b) reads as rewritten:

"(b) ~~Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land."

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 27
Corrected Copy 2/18/03

Short Title:	Expand DNA Databank/All Felonies.	(Public)
Sponsors:	Representatives Rhodes; Barnhart, Blust, Culp, Ellis, Gorman, Gulley, Hilton, Holmes, McCombs, McGee, McHenry, McMahan, Preston, Setzer, Stam, and Wood.	
Referred to:	Judiciary I.	

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE STATE'S DNA DATABASE AND DATABANK 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 felonies or other violent crimes against the person. 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,~~2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes 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,~~2003, of any of these crimes, or who is found not guilty of any of these crimes 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~~2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a Forensic Unit in

accordance with G.S. 15A-1321 before July 1, 2003, shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article include:

(1) All felonies.

~~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.~~

(2) 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.~~

(3) G.S. 14-277.3 — Stalking.

~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 3. G.S. 15A-148 reads as rewritten:

"**§ 15A-148. Expunction of DNA records when charges are dismissed on ~~appeal or~~ appeal, pardon of innocence is ~~granted.~~granted, or person was found not guilty by reason of insanity and is discharged from mental health facility.**

(a) Upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt of a pardon of innocence with respect to any such offense, or upon motion by a defendant who was found not guilty by reason of insanity following the issuance of a final order discharging the defendant from the mental health facility in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes, the court shall issue an order of expungement of the DNA record and samples in accordance with

subsection (b) of this section. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the SBI to send a letter documenting expungement as required by subsection (b) of this section.

(b) When an order of expungement has been issued pursuant to subsection (a) of this section, the order of expungement, together with a certified copy of the final appellate court order reversing and dismissing the ~~conviction or~~ conviction, a certified copy of the instrument granting the pardon of innocence, or a certified copy of the final order discharging the defendant from the mental health facility shall be provided to the SBI by the clerk of court. Upon receiving an order of expungement for 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 profile shall be expunged and the DNA sample destroyed by the SBI, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the address specified by the court in the order of expungement. The SBI shall adopt procedures to comply with this subsection."

SECTION 4. This act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 79*

Short Title:	DNA Registry.	(Public)
Sponsors:	Representatives Alexander; Saunders and Pate.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample.**

(a) The following definitions apply in this section:

(1) 'DNA'. – As defined in G.S. 15A-266.2.

(2) 'DNA Record'. – As defined in G.S. 15A-266.2.

(3) 'DNA Sample'. – A sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to Article 13 of Chapter 15A of the General Statutes. The term includes a DNA blood sample as defined in G.S. 15A-266.2 and a DNA fluid or tissue sample as defined in G.S. 15A-266.2.

(4) 'SBI'. – State Bureau of Investigation.

(b) Any person who is arrested for committing any of the following offenses must provide his or her DNA sample pursuant to this section for DNA analysis and testing:

(1) Any Class A through E felony unless the offense is a violation of Chapter 90 or Chapter 143 of the General Statutes or is a larceny or embezzlement offense. For purposes of this subdivision, the term 'larceny or embezzlement offense' is a violation of G.S. 14-74, 14-100, 53-129, 58-2-162, or 105-236(9a)a., or Article 18 of Chapter 14 of the General Statutes.

(2) G.S. 14-32.1 Assaults on handicapped persons.

~~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.~~
(2) 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.~~
(3) G.S. 14-277.3 — Stalking.
~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 5. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~blood, other bodily fluid, or tissue samples.**

(a) The tests to be performed on each ~~blood~~ blood, other bodily fluid, or tissue 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.
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."

SECTION 6. The catch line of G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~blood, other bodily fluid, or tissue samples.**"

SECTION 7. G.S. 15A-266.8 reads as rewritten:

"**§ 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 of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S. 15A-502A 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~~ blood, other bodily fluid, and tissue 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."

SECTION 8. G.S. 15A-1382 reads as rewritten:

"**§ 15A-1382. Reports of disposition; ~~fingerprints.~~fingerprints and DNA samples.**

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. When a DNA sample is taken from the defendant pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation.

(c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-502A prior to the disposition of the case, then a DNA sample shall be taken from

the felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation as provided by Article 13 of this Chapter."

SECTION 9. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile pursuant to G.S. 15A-502A."

SECTION 10. This act becomes effective December 1, 2003. Section 1 of this act applies to arrests made on or after December 1, 2003.

House Judiciary I Committee

March 4, 2003

Minutes

The House Judiciary I Committee met on Tuesday, March 4, 2003 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, Harrell, Insko, Ross, West and Wood. Representative Cunningham, 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).

Representative Stam was recognized for an explanation of House Bill 11, AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE, (Attachment III). He said that the bill would repeal six statutes that have been ruled unconstitutional by the appellate courts. The bill would eliminate three laws involving local alcohol sales and a campaign finance law declared unconstitutional by the federal courts. The bill also would eliminate a law adopted in 2000 that would have allowed three judges added to the Court of Appeals to serve four years before coming up for re-election. Representative Stam distributed copies of general statutes and an order and summary judgment, (Attachments IV and V).

Mr. Tim Hovis, Staff Attorney, was recognized to provide additional explanation of the bill. A copy of the bill analysis prepared by Mr. Hovis is attached (VI).

Following brief discussion, Representative Alexander moved that the bill be given a favorable report. The motion carried, (Attachment VII).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY MARCH 4, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 11 – REPEAL UNCONSTITUTIONAL STATUTES
REPRESENTATIVE STAM

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 4, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCRA
Ken Melton	Alley Associates
Lorin Mueller	NC Cops
John Phelps	NCLM
Matt Osborne	AOC
Jon Carr	Jordan Price
John Bowdish	Bowdish Consulting
[signature]	NCFPC
Shelley Welton	Conservation Council
Steve Wall	Conservation Council
Dean Plunkett	NC Beer & Wine.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 4, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Gorman	Mercer & Assoc.
John Cyrus	N.C. State Grange
W. Paul Pulley	NCATL
Beth Melchor	NAMI NC
[illegible]	M+W

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 11

Short Title:	Repeal Unconstitutional Statutes.	(Public)
Sponsors:	Representatives Stam; Culp and Pate.	
Referred to:	Judiciary I.	

February 13, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.12A is repealed.

SECTION 2. S.L. 1997-182 is repealed. This also repeals G.S. 18B-1006(l).

SECTION 3. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.

b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

~~(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:~~

~~a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.~~

~~b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.~~

~~c. Operates ABC stores.~~

~~d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.~~

~~This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.~~"

SECTION 4. G.S. 18B-1006(j)(4) is repealed.

SECTION 5. G.S. 7A-16 reads as rewritten:

"**§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General

Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. ~~Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.~~

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in § 7A-32.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 6. G.S. 1-44.2(b) reads as rewritten:

"(b) ~~Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership.~~ The presumption established by this section is rebuttable by showing that a party has good and valid title to the land."

SECTION 7. This act is effective when it becomes law.

§ 163-278.12A. Disclosure of spending for material that names candidates.

(a) General Duty to Report. – Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if the printed material or advertisement names a candidate or names an individual whose prospective or potential candidacy is the principal purpose of a political committee. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and is not intended to advocate the election or defeat of a candidate or prospective candidate; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, or the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. – Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include an expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditures described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. – For the purpose of this section, notwithstanding G.S. 163-278.6(9), the term "expenditure" means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability. – No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person. (1997-515, s. 11(a).)

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-182
SENATE BILL 447

AN ACT TO ESTABLISH THE LUMBERTON ECONOMIC DEVELOPMENT AND TOURIST DISTRICT AND TO AUTHORIZE THE ISSUANCE OF CERTAIN ABC PERMITS IN THIS TYPE OF DISTRICT.

Section 1. District Created. – The Lumberton Economic Development and Tourist District is created. The District consists of the area described in Section 2 of this act. The District is a body politic and corporate and a political subdivision of the State. The District is subject to the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes.

The Lumberton City Council shall serve, ex officio, as the governing body of the District, and the officers of the City Council shall likewise serve as the officers of the governing body of the District. The governing body of the District shall promote economic development and tourism in the District and do all acts reasonably necessary to fulfill this purpose.

A simple majority of the governing body of the District constitutes a quorum. Approval by a majority of a quorum is sufficient to determine any matter before the governing body of the District.

Section 2. Description of District. – The Lumberton Economic Development and Tourist District consists of the following area:

BEGINNING at a point where the western right-of-way line of Interstate 95 intersects Lumber River and runs thence from said beginning point in a western direction with Lumber River to the run of Saddletree Swamp; thence in a northern direction with the run of Saddletree Swamp to the southern right-of-way line of North Carolina Highway 211 (also known as Roberts Avenue); thence with southern right-of-way line of North Carolina Highway 211 in an eastern direction to a point where the southern right-of-way line of said highway intersects the run of Five Mile Branch; thence in a northern direction with the run of Five Mile Branch to a point in the run of said branch being located 500 feet west of (perpendicular distance) the western right-of-way line of Interstate 95; thence leaving said Five Mile Branch in a northern direction with a line being 500 feet west of and parallel to the western right-of-way line of Interstate 95 to a point in the eastern property line of Mayfair Subdivision; thence in a general northern direction with the various eastern property lines of Mayfair Subdivision to the eastern property line of Mayfair North Subdivision; thence in a general northern direction with the various eastern property lines of Mayfair North Subdivision and beyond to a point in a ditch just south of the AA building; thence in a western direction with said ditch to the run of Saddletree Swamp; thence with the run of Saddletree Swamp in a northern direction approximately 1900 feet to a point; thence leaving said swamp in an eastern direction to and with the southern line of property owned by Lumberton Motors (Deed Book 920, Page 557) to a point in said southern line being 500 feet (perpendicular distance) west of the western right-of-way line of Interstate 95; thence in a northern direction 500 feet west of and parallel to the western right-of-way line of Interstate 95 to a point 500 feet south of and perpendicular to U.S. Highway 301 (also known as Fayetteville Road); thence in a northwestern direction 500 feet south of and parallel to U.S. Highway 301 to a point where this line intersects the northwestern line of Lawrence H. Oliver's property (Deed Book 628, Pages 673 and 674) if it were extended; thence in a northeastern direction to, with, and beyond Lawrence H. Oliver's northwestern property line to a point in the northeastern right-of-way line of U.S. Highway 301; thence with the northeastern right-of-way line of U.S. Highway 301 in a southeastern direction to the most southern corner of Robeson Community College property; thence with the southeastern property line of Robeson Community College property to the western right-of-way line of Interstate 95; thence crossing Interstate 95 to a point in the eastern right-of-way line of said Interstate 95,

said point being Thomas Carr Gibson's southwest corner (Deed Book 775, Page 665); thence with and beyond Gibson's southern line (Deed Book 775, Page 665, Deed Book 490, Pages 84 and 85, and Deed Book 485, Page 335) to a point in the center line of Secondary Road 1005 (also known as Barker Ten Mile Road); thence with the center line of Secondary Road 1005 in a southern direction to a point at the intersection of the center line of said Secondary Road 1005 with the northeastern right-of-way line of U.S. Highway 301 (also known as Secondary Road 1997 and Fayetteville Road); thence with the eastern right-of-way line of U.S. Highway 301, in a southeastern direction to a point in the run of Five Mile Branch; thence in a northeastern direction with the run of Five Mile Branch approximately 352.63 feet to a point in the run of said branch; thence leaving said branch 300 feet east of and parallel to U.S. Highway 301 approximately 488.4 feet to a point in the northern right-of-way line of a private drive (54 feet in width); thence with the northern right-of-way line of said private drive in a western direction to a point in the western right-of-way line of said U.S. Highway 301; thence with said western right-of-way line to a point 300 feet (perpendicular distance) south of the southern right-of-way line of Liberty Hill Road; thence in a western direction 300 feet south of and parallel to the southern right-of-way line of Liberty Hill Road to a point in the eastern right-of-way line of Independence Drive; thence with the eastern right-of-way line of Independence Drive in a northern direction to a point in the southern right-of-way line of Liberty Hill Road; thence with the southern right-of-way line of Liberty Hill Road in a western direction crossing Independence Drive to the northwestern property corner of property owned by the Church of Jesus Christ of Latter Day Saints; thence in a southern direction with the western property line of said church property to a point 300 feet (perpendicular distance) south of Liberty Hill Road; thence in a western direction 300 feet south of and parallel to the southern right-of-way line of Liberty Hill Road to a point 500 feet east of (perpendicular distance) the eastern right-of-way of Interstate 95; thence in a southern direction 500 feet east of and parallel to the eastern right-of-way line of Interstate 95 to a point 500 feet north (perpendicular distance) of North Carolina Highway 211 (also known as Roberts Avenue); thence in a southeastern direction 500 feet north of and parallel to North Carolina Highway 211 to a point where if extended the western right-of-way line of McMillian Avenue would intersect this line; thence in a southern direction to and with the western right-of-way line of McMillian Avenue to a point being 135 feet south (perpendicular distance) of North Carolina Highway 211; thence in a western direction 135 feet southeast of and parallel to North Carolina Highway 211, crossing Rowland Avenue to a point in the western right-of-way line of Rowland Avenue; thence in a southern direction with the western right-of-way line of Rowland Avenue to a point in the northern right-of-way line of a now abandoned V & C S Railroad right-of-way; thence with said railroad right-of-way line in a southwestern and then southern direction to a point on the northern line of Jennings Cotton Mills Subdivision (Map Book 7, Page 48) approximately 80 feet north of West Twenty-fourth Street; thence in a western direction, with the northern line of said Jennings Cotton Mills Subdivision line to a point approximately 218.39 feet east of Interstate 95; thence in a southern direction approximately 79.72 feet to a point in the northern right-of-way line of West Twenty-fourth Street at its intersection with Delmar Street; thence in a western direction with the northern right-of-way line of Twenty-fourth Street to a point 200 feet east (perpendicular distance) of the eastern right-of-way line of Interstate 95; thence in a southern direction 200 feet east of and parallel to Interstate 95 to a point in the center line of Carthage Road; thence in a western direction with the center line of Carthage Road to the intersection of the center line of said Carthage Road with the western right-of-way line of Interstate 95; and thence in a southern direction to and with the western right-of-way line of Interstate 95 to the point of beginning.

Section 3. G.S. 18B-1006 is amended by adding a new subsection to read:

"(l) Economic Development and Tourist District. – Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An 'economic development and tourist district' is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly enacted before July 1, 1997 which specifically designates it in the act as an 'economic development and tourist district', and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized

by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district."

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

In the General Assembly read three times and ratified this the 4th day of June, 1997.

Approved this 13th day of June, 1997

§ 18B-1006. Miscellaneous provisions on permits.

(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. Provided, however, this subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board.

(b) Lockers at Clubs. – A private club or congressionally-chartered veterans organization which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than eight liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined, may be stored by a member at one time.

(c) Wine Sales. – Holders of retail or wholesale permits for the sale of unfortified or fortified wine may buy and sell only wines on the Commission's approved list. The Commission may authorize the importation and purchase of wines not on the approved list by permittees and others. An authorization shall state the kind and amount of wine that may be imported and purchased and the time within which the transaction shall be completed.

(d) Unlawful Possession or Consumption. – It shall be unlawful for a permittee to possess or consume, or allow any other person to possess or consume, on the licensed premises, any fortified wine or spirituous liquor, the possession or consumption of which is not authorized either by the permits issued to him for the premises or by any other provision of the ABC law.

(e) Facsimile Permit. – It shall be unlawful for any person to produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on his licensed premises.

(f) Failure to Surrender Permit. – It shall be unlawful for any person to refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.

(g) Restrictions on Sales at Cooking Schools. – Retail sales of food or alcoholic beverages to be consumed on the premises of a cooking school are restricted to bona fide enrolled students of that school. Violation of this subsection is a ground for administrative action under G.S. 18B-104.

(h) Purchase Restrictions. – A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler who maintains a place of business in this State and has the proper permit.

(i) Tour Boats. – The Commission may issue permits to boats that conduct regularly scheduled tours upon the rivers or waterways of this State under the following conditions:

(1) A boat shall serve meals on each tour and shall have a dining area with seating for at least 36 people;

(2) A boat's gross receipts from food and non-alcoholic beverages shall be greater than its gross receipts from alcoholic beverages;

(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), (7), and (10), but no off-premises sales may be made pursuant to those permits;

(4) A boat shall have a home port in an area where issuance of any of the permits listed in subdivision (3) is legal, and all passengers shall enter the boat at the home port or at other ports listed on a preannounced itinerary. The boat's permits are valid during tours that leave and return to the boat's home port, and apply regardless of whether the boat crosses into an area where sales are not legal, if the boat docks only at a port listed on the preannounced itinerary, except in an emergency; and

(5) A boat conducting tours along the intracoastal waterway and navigable waterways that enters into the intracoastal waterway, pursuant to a preannounced itinerary that includes visits to two or more cities, may serve alcoholic beverages pursuant to ABC permits issued according to the jurisdiction of its home port in the following manner:

a. While on tour, alcoholic beverages may be served to passengers;

b. While docked in any other port alcoholic beverages may be served only to tour passengers;

c. During special city-sponsored events and festivals, in which case the boat may open its galley and bars at dockside to the general public and sell those alcoholic beverages that are lawful in the jurisdiction in which it is docked. Any sales in this manner shall be in accordance with the requirements of any ordinances of the jurisdiction in which the boat is docked.

(6) Liquor purchased for resale in mixed beverages may be purchased only from the local board for the jurisdiction of the boat's home port.

(j) Recreation Districts. – Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses in a recreation district.

A "recreation district" is an area that meets any of the following requirements:

(1) An area that is located in a county that has not approved the issuance of permits, has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store, and contains a

facility of at least 450 acres where five or more public auto racing events are held each year.

(2) An area that is located in a county that borders a county which has held elections pursuant to G.S. 18B-600(f) and borders on another state and which (i) contains a facility of at least 225 acres where four or more public auto racing events are held each year or (ii) contains a facility of at least 140 acres where 80 or more motor sports events are held each year.

(3) A recreation district includes the area within a half-mile radius of a racing facility that meets the requirements of subdivision (1) or (2) of this subsection.

(4) An area of at least 150 acres that offers any of the following facilities or services: Lodging, retail outlets, meeting facilities, restaurants, a white water rafting training facility, or other outdoor recreation activities and is located in a county that meets all of the following requirements:

a. Borders another state.

b. Contains part of the only National Park located in North Carolina.

c. Has only one city that has a local ABC system and has authorized the off-premises sale of malt beverages and the on-premises sale of unfortified wine, fortified wine, and mixed alcoholic beverages.

(k) Residential Private Club and Sports Club Permits. – The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club, except if the sale of mixed beverages is not lawful within a jurisdiction and that locality has voted against the sale of mixed beverages in a referendum conducted on or after September 1, 2001. If the issuance of permits is prohibited by the exception in the previous sentence, the Commission may renew existing permits and may continue to issue permits for a business location that had previously held permits under this subsection. No permit may be issued to any residential private club or sports club that practices discrimination on the basis of race, gender or ethnicity.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county.

(l) Economic Development and Tourist District. – Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An "economic development and tourist district" is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly enacted before July 1, 1997 which specifically designates it in the act as an "economic development and tourist district", and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing

body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district.

(m) Interstate Interchange Economic Development Zones. –

(1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:

a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;

b. Operates ABC stores;

c. Borders on another state; and

d. Lies north and east of the Roanoke River.

(2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

a. Located within one mile of any interstate highway interchange in that county.

b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).

(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:

a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.

b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.

c. Operates ABC stores.

d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.

This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection.

(n) National Historic Landmark District. – The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4) and (6) located within a National Historical Landmark as defined in 16 U.S.C. § 470a(a)(1)(B) located in a county that meets all of the following requirements:

(1) Has approved the sale of malt beverages and unfortified wine but not mixed beverages.

(2) Has at least one city that has approved the operation of an ABC store and the sale of mixed beverages.

(3) Has at least 150,000 population based on the last federal census. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 23; 1985, c. 114, s. 2; c. 301; 1987, c. 515; c. 760; 1989, c. 360; c. 770, s. 49; c. 800, s. 18; 1991, c. 340, s. 1; c. 459, s. 7; 1991 (Reg. Sess., 1992), c. 920, s. 12; 1993, c. 415, ss. 17-19; c. 508, s. 6; 1995, c. 224, s. 1; c. 372, s. 2; c. 458, s. 8; c. 466, ss. 11-12; 1997-182, s. 3; 1997-395, s. 1; 1997-443, s. 16.27(a); 1999-462, ss. 2, 10, 12, 14; 2001-130, ss. 1, 1.4.)

§ 1-44.2. Presumptive ownership of abandoned railroad easements.

(a) Whenever a railroad abandons a railroad easement, all right, title and interest in the strip, piece or parcel of land constituting the abandoned easement shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement, with the presumptive ownership of each adjacent landowner extending to the centerline of the abandoned easement. In cases where the railroad easement adjoins a public road right-of-way, the adjacent property owner's right, title and interest in the abandoned railroad easement shall extend to the nearest edge of the public road right-of-way.

The side boundaries of each parcel so presumptively vested in the adjacent property owner shall be determined by extending the side property lines of the adjacent parcels to the centerline of the abandoned easement, or as the case may be, the nearest edge of the public road right-of-way. In the event the side property lines of two adjacent property owners intersect before they meet the centerline or nearest edge of the public road right-of-way, as the case may be, such side property lines shall join and run together from the point of intersection to the centerline of the easement or nearest edge of the public road right-of-way, as the case may be, perpendicular to said centerline or edge.

(b) Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership. The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.

(c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 6. (1987, c. 433; 1987 (Reg. Sess., 1988), c. 1071, s. 6.)

FILED
1999 AUG 31 PM 4:47
WAKE COUNTY, C.S.C.
BY _____

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

98-CVS-13184

HOWARD REAVES, et al
Plaintiffs,

v.

NORTH CAROLINA ALCHOLIC BEVERAGE CONTROL COMMISSION, And CITY OF LUMBERTON ABC BOARD
Defendants.

ORDER AND SUMMARY JUDGMENT

This Cause coming on to be heard before the undersigned at the August 16, 1999 Session of Wake County Civil Superior Court upon Defendants' Motions to Dismiss and Plaintiff's Motion for Summary Judgment.

Paul Stam, Jr. and Henry C. Fordham, Jr. appeared for the Plaintiffs. Thomas F. Moffitt and John P. Gravelec-Pannone appeared for the North Carolina Alcoholic Beverage Control Commission. Douglas P. Murray appeared for City of Lumberton ABC Board.

The Court having heard the arguments of counsel and considered the matters of record including the pleadings, stipulations, affidavits on file and the Defendants' responses to discovery filed with the Court on or before August 16, 1999.

IT IS NOW HEREBY ORDERED, ADJUGED, DECLARED AND DECREED:

1. Defendants' Motions to Dismiss pursuant to Rule 12(b) (1) (2) and (6) (which by stipulation of the parties relate only to the standing of the Plaintiffs) are denied.

2. Summary Judgment is granted for the Plaintiffs pursuant to Rule 56 on the grounds that there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law.

3. The Court hereby declares that the Lumberton Act, to wit: Session Law 1997-182 entitled "AN ACT TO ESTABLISH THE LUMBERTON ECONOMIC DEVELOPMENT AND TOURIST DISTRICT AND TO AUTHORIZE THE ISSUANCE OF CERTAIN ABC PERMITS IN THIS TYPE OF DISTRICT" is void and unenforceable in that it violates the North Carolina Constitution, Article II, Section 24 and Article XIV, Section 3.

4. Each Defendant is hereby enjoined from implementing and enforcing the provisions of the Lumberton Act to wit: Session Law 1997-182 entitled "AN ACT TO ESTABLISH THE LUMBERTON ECONOMIC DEVELOPMENT AND TOURIST DISTRICT AND TO AUTHORIZE THE ISSUANCE OF CERTAIN ABC PERMITS IN THIS TYPE OF DISTRICT". Each Defendant is hereby enjoined from granting, issuing or renewing permits

under the Lumberton Act. Any permits heretofore granted which depend for their validity on the validity of the aforesaid Lumberton Act shall be void.

5. Any permit holders who have received permits pursuant to this Act shall surrender those permits to the ABC Control Commission on or before a date to be set by the Commission.

6. The privilege of sales of mixed beverages pursuant to the Act is void. Permit holders are hereby enjoined from retail sale of mixed beverages on their premises by virtue of the permits issued pursuant to the Act. The permit holders may dispose of any and all spirituous liquor (exclusive of beer and wine) on hand on the date this summary judgment is entered in any manner approved by the ABC Control Commission, including disposal in accordance with the provisions of G.S. 18B-1002(a)(1).

7. The Clerk shall tax the costs to the Defendants.

8. By consent of the parties stated in open Court on August 16, 1999 this Order may be entered out of county, out of term, and out of session.

Entered and signed this 31 day of August, 1999 at Raleigh, North Carolina.

Honorable Gregory Weeks
Wake County Superior Court
Judge Presiding

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NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

99-CVS-09622

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WAKE COUNTY, C.S.C.

RICHARD E. FRAZIER, ANN W. FRAZIER, CHARLES E. PETERSON, JR., RICHARD W. GASKINS, JULIAN R. MILLS, SR. and TOM M. JOHNSON,

Plaintiffs,

v.

NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION; And HALIFAX COUNTY ALCOHOLIC BEVERAGE CONTROL BOARD,

Defendants.

ORDER AND SUMMARY JUDGMENT

This Cause coming on to be heard before the undersigned at the December 13, 1999 Session of Wake County Civil Superior Court upon Defendants' Motions to Dismiss and Plaintiffs' Motion for Summary Judgment.

Paul Stam, Jr. appeared for the Plaintiffs. John P. Gravelec-Pannone appeared for the North Carolina Alcoholic Beverage Control Commission. ~~Turner Stephenson appeared for Halifax County ABC Board.~~

The Court having heard the arguments of counsel and considered the matters of record including the pleadings, affidavits, and the Defendants' responses to discovery and the deposition taken November 2, 1999 of Michael Herring, Administrator of the NC Alcoholic Beverage Control Commission.

IT IS NOW HEREBY ORDERED, ADJUGED, DECLARED AND DECREED:

1. Defendants' Motions to Dismiss pursuant to Rule 12(b) (1) (2) and (6) are denied.

2. Summary Judgment is granted for the Plaintiffs pursuant to Rule 56 of the Rules of Civil Procedure on the grounds that there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law.

3. The Court hereby declares that the Halifax Act, to wit a portion: Session Law 1999-462 entitled "AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE CERTAIN PERMITS" is void and unenforceable in that it violates the North Carolina Constitution, Article II, Section 24 and Article XIV, Section 3. The portion of the law to which this order and judgment applies is sub-subdivision 3 of Section 12 through the end of Section 12 which reads as follows:

"(3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:

a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.
b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.
c. Operates ABC stores.
d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.

This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection."

4. Each Defendant is hereby enjoined from implementing and enforcing the provisions of The Halifax Act. Each Defendant is hereby enjoined from granting, issuing or renewing permits under the Halifax Act. Any permits heretofore granted which depend for their validity on the validity of the aforesaid Halifax Act shall be void.

5. Any permit holders who have received permits pursuant to The Halifax Act shall surrender those permits to the ABC Control Commission on or before a date to be set by the Commission.

6. The privilege of sales of mixed beverages pursuant to The Halifax Act is void. Permit holders are hereby enjoined from retail sale of mixed beverages on their premises by virtue of the permits issued pursuant to the Act. The permit holders may dispose of any and all spirituous liquor (exclusive of beer and wine) on hand on the date this summary judgment is entered in any manner approved by the ABC Control Commission, including disposal in accordance with the provisions of G.S. 18B-1002(a)(1).

7. The Clerk shall tax the costs to the Defendants.

8. By consent of the parties stated in open Court on December __, 1999 this Order may be entered out of county, out of term, and out of session.

Entered and signed this 14th day of December, 1999 at Raleigh, North Carolina.

Gregory Weeks

Honorable Gregory Weeks
Wake County Superior Court
Judge Presiding

Document/HalifaxOrder

FILED

2001 FEB 27 PM 2:14

SWAIN COUNTY, C.S.C.

BY

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
99-CVS 179

SWAIN COUNTY, a body politic,
and JIM DOUTHIT
Plaintiffs,

v.

ORDER AND SUMMARY JUDGMENT

NORTH CAROLINA ALCOHOLIC
BEVERAGE CONTROL COMMISSION,
Defendant.

This cause coming on to be heard before the Honorable James L. Baker, Jr., Superior Court Judge residing at the February 7, 2001 of Swain County Civil Superior Court upon Plaintiffs' Motion for Summary Judgment and Defendant's Motions to Dismiss and Motion for Summary Judgment. Kimberly C. Lay, Esquire appeared for the Plaintiffs, Amy Yonowitz, Esquire appeared for the Defendant. The Court having heard the arguments of counsel and considered the matters of record including pleadings, affidavits and the Defendants' responses to discovery.

IT IS NOW HEREBY ORDERED, ADJUDGED, DECLARED AND DECREED:

1. Defendants' Motions to Dismiss pursuant to Rule 12b(1),(2) and (6) are hereby denied.

2. Summary Judgment is hereby granted for Plaintiffs pursuant to Rule 56 on the grounds that there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law.

3. The Court hereby declares that the "Swain Act", to wit: session law 1999-462 entitled "AN ACT TO AUTHORIZE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE CERTAIN PERMITS" void and unenforceable in that it violates the North Carolina Constitution, Article II, Section 24 and Article XIV, Section 3. The portion of the law to which this Order and Judgment applies is Sub-subsection 4 of Section 10 which Section rewrites General Statute 18b-1006(j) which reads as follows: "(j)Recreation Districts.–notwithstanding the provisions of Article VI of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverage to qualified businesses in a recreation district. A "Recreation District" is an area that meets any of the following requirements... (4) an area of at least 150 acres that offers any of the following facilities or services: lodging, retail outlets, meeting facilities, restaurants, white water rafting training facility, or other outdoor recreation activities and is located in a county that meets all the following requirements: a) borders another state; b) contains part of the only national park located in North Carolina; c) has only one city that has a local ABC system that has authorized the off premises sale of malt beverages and the on premises sale of unfortified wine, fortified wine and mixed

4. The Defendant is hereby enjoined from implementing and enforcing the provisions of the Swain Act. The Defendant is hereby enjoined from granting, issuing or renewing permits under the Swain Act. Any permits heretofore granted which depend on the validity of aforesaid Swain Act shall be void.

5. Any permit holders who have received permits pursuant to the Swain Act shall submit the permits to the ABC Control Commission on or before the date to be set by the Commission.

6. The privilege of sales of malt beverages, unfortified wines, fortified wine and mixed beverages pursuant to the Swain Act is void. Permit holders are hereby enjoined from retail sale of malt beverages, unfortified wines, fortified wines, and mixed beverages on the premises and by virtue of permit issued pursuant to the Swain Act. The permit holders may dispose of any and all of these alcoholic beverages on hand on the date the Summary Judgment is entered in any manner approved by the ABC Control Commission, including disposal in accordance with the provisions of G.S. 18b-1002(a)(1).

7. The clerk shall tax the costs to the Defendant.

8. By consent of the parties stated in open court on February 7, 2001, this Order may be entered out of the county, out of term, and out of session.

Entered and signed this the 23d day of February, 2001 at Marshall, Madison County, North Carolina.

The Honorable James L. Baker, Jr.
Superior Court Judge Presiding

Cited in Town of Durham v. Richmond & D.R.R., 104 N.C. 261, 10 S.E. 208 (1889); Purifoy v. Richmond & D.R.R., 108 N.C. 100, 12 S.E. 741 (1891); Bass v. Roanoke Nav. & Water-power Co., 111 N.C. 439, 16 S.E. 402 (1892); Loven v. Parson, 127 N.C. 301, 37 S.E. 271 (1900).

§ 1-44.1. Presumption of abandonment of railroad right-of-way.

Any railroad which has removed its tracks from a right-of-way and has not replaced them in whole or in part within a period of seven (7) years after such removal and which has not made any railroad use of any part of such right-of-way after such removal of tracks for a period of seven (7) years after such removal, shall be presumed to have abandoned the railroad right-of-way. (1955, c. 657.)

Legal Periodicals. — For comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

This section refers to abandonment of easements; it has no application to land owned in fee simple. McLaurin v. Winston-Salem Southbound Ry., 323 N.C. 609, 374 S.E.2d 265 (1988).

§ 1-44.2. Presumptive ownership of abandoned railroad easements.

(a) Whenever a railroad abandons a railroad easement, all right, title and interest in the strip, piece or parcel of land constituting the abandoned easement shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement, with the presumptive ownership of each adjacent landowner extending to the centerline of the abandoned easement. In cases where the railroad easement adjoins a public road right-of-way, the adjacent property owner's right, title and interest in the abandoned railroad easement shall extend to the nearest edge of the public road right-of-way.

The side boundaries of each parcel so presumptively vested in the adjacent property owner shall be determined by extending the side property lines of the adjacent parcels to the centerline of the abandoned easement, or as the case may be, the nearest edge of the public road right-of-way. In the event the side property lines of two adjacent property owners intersect before they meet the centerline or nearest edge of the public road right-of-way, as the case may be, such side property lines shall join and run together from the point of intersection to the centerline of the easement or nearest edge of the public road right-of-way, as the case may be, perpendicular to said centerline or edge.

(b) Persons claiming ownership contrary to the presumption established in this section shall have a period of one year from the date of enactment of this statute or the abandonment of such easement, whichever later occurs, in which to bring any action to establish their ownership. The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.

(c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 6. (1987, c. 433, s. 1; 1987 (Reg. Sess., 1988), c. 1071, s. 6.)

Cross References. — As to railway corridor preservation, see § 136-44.36A.

Legal Periodicals. — For comment on the acquisition, abandonment, and preservation of

rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

Constitutionality. — This section is unconstitutional as it applies to fee simple landowners in possession of disputed property, in that it fails to provide them with adequate notice, an opportunity to be heard, and with just compensation. McDonald's Corp. v. Dwyer, 111 N.C. App. 127, 432 S.E.2d 165, aff'd, 338 N.C. 445, 450 S.E.2d 888 (1994).

The first sentence of subsection (b) of this section is unconstitutional because it does not provide sufficient notice, an opportunity to be heard, and just compensation before divesting owner of a valuable property interest. The remaining portions of this section were not challenged and remain in full force and effect. McDonald's Corp. v. Dwyer, 338 N.C. 445, 450 S.E.2d 888 (1994).

Conclusive Presumption. — The first sentence of subsection (b) of this section that provides that persons claiming contrary to the presumption of subsection (a) must bring a lawsuit within one year of the enactment of the statute or the abandonment of the easement, whichever later occurs, or lose their right to rebut the presumption, turns a rebuttable presumption into a conclusive presumption which effectively takes a defendants' property without affording notice, an opportunity to be heard and just compensation. McDonald's Corp. v. Dwyer, 338 N.C. 445, 450 S.E.2d 888 (1994).

Public Road Right-of-Way Easement. — A public road right-of-way that was wholly within an abandoned railroad easement did not adjoin the easement and the second sentence of subsection (a) of this section did not apply. To adjoin, a tract must be "close to or in contact," "next to" or "touching." None of the definitions include a tract that is encompassed within another tract. Nelson v. Battle Forest Friends Meeting, 335 N.C. 133, 436 S.E.2d 122 (1993).

Applicable Only to Easements. — The Abandoned Railroad Easement Act applies only to easements, and not to fee interests. Love v. United States, 889 F. Supp. 1548 (E.D.N.C. 1994).

§ 1-45. No title by possession of public ways.

No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations. (1891, c. 224; Rev., s. 389; C.S., s. 435.)

Legal Periodicals. — For comment, "Taking Without Compensation: Measure of Permanent Damages Modified by Application of Limitation of Actions for Trespass," see 20 Wake Forest L. Rev. 671 (1984).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For comment on the acquisition, abandonment, and preservation of rail corridors in North Carolina, see 75 N.C.L. Rev. 1989 (1997).

CASE NOTES

Adverse Possession Ineffective Against Public Way, Square or Common. — Where there is a dedication and acceptance by the municipality or other governing body of public ways or squares and commons in this jurisdiction, the statute of limitations does not now run against the municipality or governing body. Steadman v. Pinetops, 251 N.C. 509, 112 S.E.2d 102 (1960).

Possession of a street by one claiming it adversely cannot divest or destroy the right of the public therein. State v. Godwin, 145 N.C. 461, 59 S.E. 132 (1907).

Adverse use of a part of a street dedicated to and accepted by the public cannot ripen title in the user when there has been an acceptance of the dedication of the street and no abandonment thereof on the part of the public. City of Salisbury v. Barnhardt, 249 N.C. 549, 107 S.E.2d 297 (1959).

But Municipality Must Have Title or Rights Therein. — The rule that individuals

CASE NOTES

Political Committee Registration Requirements Upheld. — Plaintiff, a tax-exempt nonprofit membership corporation, was denied a preliminary injunction to enjoin enforcement of North Carolina's political committee registration requirements, as provided in this section, § 163-278.6(14), §§ 163-278.7 through 163-278.10 and § 163-278.13, because the court found that the "major purpose" test was neither vague nor overbroad; that North Carolina's higher threshold, $3,000 per two-year election cycle raising a rebuttable presumption that the group's major purpose is electioneering, ensured that only groups engaging in significant electioneering were presumed to be political committees; that North Carolina's express advocacy test narrowed the communications that qualify as expenditures; and that the law provided sufficient notice to and safeguards for issue advocacy groups. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498 (E.D.N.C. 2000).

Cited in North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675 (E.D.N.C. 1998), aff'd in part and rev'd in part on other grounds, 168 F.3d 705 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

§ 163-278.12. Special reporting of contributions and independent expenditures.

(a) Subject to G.S. 163-278.16(f) and 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier. (1973, c. 1272, s. 1; 1979, c. 107, s. 15; c. 1073, s. 20; 1999-31, s. 2(d).)

§ 163-278.12A. Disclosure of spending for material that names candidates.

(a) General Duty to Report. — Any individual, person, political committee, or other entity that makes an expenditure for printed material or advertisements broadcast or distributed to anyone other than members of the entity shall report those expenditures in accordance with subsection (b) of this section if the printed material or advertisement names a candidate or names an individual whose prospective or potential candidacy is the principal purpose of a political committee. The disclosure requirements of this section do not apply to the following:

(1) Material that is solely informational and is not intended to advocate the election or defeat of a candidate or prospective candidate; or

(2) The owner of a newspaper, magazine, radio outlet, or television outlet, if that owner is not a candidate, political committee, or the parent entity of a political committee under G.S. 163-278.19.

(b) Procedures for Reporting; Exceptions. — Any political committee or other entity otherwise required by this Article to file reports with a board of elections shall include an expenditure described in subsection (a) of this section on those reports. Any entity not otherwise required by this Article to file reports shall report expenditures described in subsection (a) of this section to the State Board of Elections within 10 days after the aggregate expenditure has reached the lowest threshold amount set for candidates and political party committees in G.S. 163-278.10A. After the initial report, each entity shall report subsequent expenditures described in subsection (a) of this section according to the schedule set out in G.S. 163-278.9(a) or Part 2 of this Article, whichever is appropriate.

(c) Definition. — For the purpose of this section, notwithstanding G.S. 163-278.6(9), the term "expenditure" means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loans, payment, gift, pledge, or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise, or other obligation, whether or not legally enforceable. An individual or entity is deemed to have made an expenditure for printed material or advertisements if that individual or entity has agreed to compensate another individual or entity for purchasing such printed material or advertisements.

(d) No Criminal Liability. — No duty imposed by this section alone, and by no other law, shall be relied upon or otherwise interpreted to create criminal liability for any person. (1997-515, s. 11(a).)

CASE NOTES

Constitutionality. — The district court's failure to reach the question of the constitutionality of this section on mootness grounds, based on the Fourth Circuit Court of Appeals, finding that the definition of political committee was unconstitutionally vague and overbroad, was erroneous where the appellee was also an "entity" and "a person." Perry v. Bartlett, 231 F.3d 155 (4th Cir. 2000).

This Section Violates the Federal Constitution. — The absence in this section of language limiting its application to major purpose groups makes this section applicable to everyone and results in its violating the First Amendment of the United States Constitution. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498 (E.D.N.C. 2000).

This section is unconstitutionally overbroad because it would allow the regulation of issue advocacy wherein the speaker has manifested an intent to advocate for the election or defeat of a candidate. Perry v. Bartlett, 231 F.3d 155 (4th Cir. 2000).

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

HOUSE BILL 11:
Repeal Unconstitutional Statutes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Stam; Culp and Pate
Date:	March 3, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 11 repeals statutory language declared unconstitutional by various state and federal courts, including language (1) requiring the disclosure of spending for materials naming political candidates; (2) authorizing the issuance of certain ABC permits; (3) providing for the initial terms of appointment for certain Court of Appeals judgeships, and (4) creating a statute of limitations to challenge the presumptive ownership of abandoned railroad easements.***

BILL ANALYSIS: **Section 1** of the bill repeals G.S. 163-278.12A. This statute requires "any individual, person, political committee or entity" making expenditures for printed materials or advertisements naming a political candidate to file a report with the State Board of Elections.

The Fourth Circuit Court of Appeals held this statute to be "unconstitutionally overbroad as a regulation of issue advocacy when a speaker advocates for or against a political candidate." *Perry v. Bartlett*, 231 F.3d 155 (4th Circuit 2000).

Sections 2, 3, and 4 of the bill repeal several sections of the General Statutes authorizing the Alcohol Beverage Control Commission to issue permits for the sale of alcoholic beverages. **In each case, these statutes have been declared "void and unenforceable" by a North Carolina court as a violation of the state constitutional requirements for local and general laws.**

- Section 2 repeals S.L. 1997-182, including G.S. 18B-1006(l), which authorizes the Alcohol Beverage Control (ABC) Commission to issue permits for the sale of alcoholic beverages within the Lumberton Economic Development and Tourist District.
- Section 3 repeals G.S. 18B-1006(m)(3) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Halifax County located within an Interstate Economic Development Zone.
- Section 4 the bill repeals G.S. 1813-1006(j)(4) which authorizes the ABC Commission to issue permits for the sale of alcoholic beverages to certain establishments in Swain County located within a recreation district.

Section 5 amends G.S. 7A-16 to strike language providing that the initial terms for the three additional Court of Appeals judgeships appointed by the Governor on or after December 15, 2000 are effective until January 1, 2005.

In *Pope v. Easley*, 354 N.C. 544 (2001), the N.C. Supreme Court held that, while the creation of the three judgeships was constitutional, the "provisions making the creation of the new judgeships effective upon gubernatorial appointment and allowing the appointees to serve for nearly four years before facing election" violated Article IV, Section 19 of the State Constitution. This provision provides that appointees

"hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs."

Section 6 amends G.S. 1-44.2. This statute creates a presumption that upon abandonment of a railroad easement, "all right, title and interest in the strip, piece or parcel of land...shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement." Subsection (b) creates a statute of limitations to challenge this presumption by providing that "persons claiming ownership contrary to the presumption...have a period of one year from the date of enactment of this statute or the abandonment of the easement, whichever later occurs,...to bring any action to establish their ownership."

In *McDonald's Corporation v. Dwyer*, 338 N.C. 445 (1994), the N.C. Supreme Court held the statute of limitations in subsection (b) to be a violation of due process "by effectively taking property of record title holders...without affording notice, an opportunity to be heard, and just compensation." Section 6 deletes this language from subsection (b) of the statute.

EFFECTIVE DATE: House Bill 11 is effective upon becoming law.

ATTACHMENT VII

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. 11 A BILL TO BE ENTITLED AN ACT TO REPEAL ONLY THOSE STATUTES WHICH HAVE BEEN DECLARED UNCONSTITUTIONAL BY A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND FROM WHICH NO APPEAL HAS BEEN TIMELY PERFECTED OR THE APPEAL HAS BEEN FULLY CONCLUDED ADVERSELY TO THE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/15/01

House Judiciary I Committee

March 11, 2003

Minutes

The House Judiciary I Committee met on Tuesday, March 11, 2003 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, Capps, Daughtry, Harrell, Insko, Miller, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Luebke was recognized for an explanation of House Bill 33, AN ACT TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES, (Attachment III). Representative Luebke stated that the bill was introduced at the request of Mr. Winston Hall. He said that the bill would allow a private citizen who feels aggrieved by the District Attorney system to move forward with the private prosecution of felony offenses. He said that the bill would require an amendment to the North Carolina Constitution. He noted the controversial nature of the bill and suggested that a subcommittee be appointed to give the issue more study.

Representative Luebke offered a proposed committee substitute, (Attachment IV). Representative Ross moved that the proposed committee substitute be adopted for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized for an explanation of the committee substitute. She said that the bill would allow a private citizen to retain a private attorney to prosecute a felony offense. The bill would allow that an attorney who is licensed to practice law in North Carolina may submit a bill of indictment charging an offense within the original jurisdiction of the superior court and may prosecute that case if the grand jury returns a true bill of indictment. Ms. Sitze stated that the bill would require a special prosecutor to provide timely written notice to the district attorney that the special prosecutor had been retained and to request that the case be calendared as appropriate. Ms. Sitze pointed out that the change made by the committee substitute was found in subsection (b) of Section 7A-70.3, and provided that the ordinary and usual state funds necessary for the proper administration of a criminal prosecution in superior court shall be available. A bill analysis providing additional information regarding the bill was distributed, (Attachment V).

Chairman Hackney asked if the state currently allowed for a private prosecutor in district court. Ms. Sitze replied that private prosecutors have been allowed who were chosen by a system created by the state, but not selected by private citizens. She said that the NC Constitution is less specific about district court and it is about superior court

and essentially authorizes the General Assembly to determine who shall be allowed to prosecute in district court.

Chairman Hackney asked how the bill would allow for notice to be given. Ms. Sitze replied that the bill does not specifically address the issue of notice.

Representative Miller noted that the bill did not provide funds for a special prosecutor and noted that only those people who are financially well off would be able to avail themselves of this provision.

Considerable discussion followed and members of the committee raised several questions.

Mr. Winston Hall who requested that the bill be introduced, was recognized and spoke in support of the bill.

Ms. Peg Dorer, Conference of District Attorneys, was recognized and spoke in opposition to the bill. .

Representative Ross asked if there is a process in place for input if a private citizen has a compliant about a district attorney. Ms. Dorer replied that there is no formal tract, but that that the Conference of District Attorneys attempts to work with them to encourage them to speak directly with that district attorney, or refer them to the State Bar if a breech of responsibility is suspected. They also sometimes direct complaints to the citizens division of the Attorney General's Office

Representative Daughtry noted that a victim may currently hire a private prosecuting attorney. Ms. Sitze agreed, but noted that it is rarely done. Representative Daughtry noted that it was his experience that the district attorney is usually happy to have help in gathering information.

Ms. Donna Pygott, North Carolina Victims Assistance Network, was recognized and spoke in opposition to the bill. She noted opposition to the bill in its current form because it discriminates against those who cannot afford to hire a private prosecutor.

Chairman Hackney stated that he would consult with Representative Luebke to determine what course to follow with respect to the bill.

The meeting was adjourned at 10:45.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY MARCH 11, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 33– PRIVATE PROSECUTION/FELONY OFFENSES
REPRESENTATIVE LUEBKE

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 11, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Winston Hall	none
Letitia Withrow	NC State Watch
Donna Pygott	NCVAN
Peg Dorer	Conference of District Attorneys
[illegible]	NCSWA
Matt Osborne	AOC
Patricia Camp	ACLU
Steve Wall	Conservation Council
Bill Wilson	NCATL
C P Donell	Inside / Wands Media
Paul Pulley	NCATL

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 11, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Kuster	NCFPC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 33

Short Title:	Private Prosecution/Felony Offenses.	(Public)
Sponsors:	Representative Luebke (By Request).	
Referred to:	Judiciary I.	

February 18, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new article to read:

"Article 9A.

"Private Prosecution of Felony Offense.

"**§ 7A-70. Intent.**

It is the intent of this Article to authorize private prosecutions of felony offenses. It is the further intent of this Article to provide that the discretion to prosecute a felony is not limited to the district attorney, and to provide that a private party may retain private counsel on behalf of a crime victim to submit a bill of indictment to a grand jury and to prosecute a felony. The procedures for prosecuting a criminal offense set out in this section are in addition to those provided under Article 9 of this Chapter and do not limit those procedures in any way.

"**§ 7A-70.1. Private counsel may prosecute felony offense.**

(a) Notwithstanding any other provision of law, an attorney licensed to practice law in North Carolina may submit a bill of indictment charging an offense within the original jurisdiction of the superior court and may prosecute that case if the grand jury returns a true bill of indictment. An attorney retained by a private citizen for this purpose shall be designated a special prosecutor and shall have the same authority and responsibility to prosecute the case as a district attorney.

(b) The provisions of Article 31 of Chapter 15A of the General Statutes shall continue to apply to the submission of a bill of indictment and its consideration by the grand jury, except that the special prosecutor shall carry out the responsibilities of the district attorney.

"**§ 7A-70.2. District attorney to calendar cases prosecuted by special prosecutor.**

A special prosecutor retained under this Article shall provide written notice to the district attorney in a timely manner stating that the special prosecutor has been retained to prosecute a felony offense and requesting the district attorney to calendar the case before the grand jury or on the trial docket as appropriate in accordance with G.S. 7A-61. Upon receipt of the written notice, the district attorney shall calendar the case as provided by G.S. 7A-61.

"**§ 7A-70.3. State is not financially liable for compensation of special prosecutor.**

Public funds shall not be used to pay for legal services rendered by a special prosecutor who submits a bill of indictment or prosecutes an offense under this Article. The State is not financially responsible or liable for the services rendered by a special prosecutor under this Article.

"**§ 7A-70.4. Concurrent prosecutions prohibited.**

If the district attorney is prosecuting a defendant for a felony offense, then a special prosecutor shall not prosecute the defendant for the same offense. If a special prosecutor is prosecuting a defendant for a felony offense, then the district attorney shall not prosecute the defendant for the same offense."

SECTION 2. Section 18 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 18. District Attorney and Prosecutorial Districts.**

(1) District Attorneys. The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his ~~district,~~ district except as otherwise provided by law, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State."

SECTION 3. The amendment set out in Section 2 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 authorizing the General Assembly to provide that attorneys other than the district attorney may prosecute criminal actions in the Superior Courts on behalf of the State."

SECTION 4. If a majority of votes cast on the question are in favor of the amendments set out in Section 2 of this act, the State Board of Elections shall certify the

amendments to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 5. Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendment set forth in Section 2 of this act. If the constitutional amendment proposed in Section 2 of this act is approved by the voters, Section 1 of this act shall become effective at the same time as the constitutional amendment.

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 33
PROPOSED COMMITTEE SUBSTITUTE H33-CSSA-1 [v.1]

3/10/2003 4:28:42 PM

Short Title: Private Prosecution/Felony Offenses. (Public)

Sponsors:

Referred to:

February 18, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new article to read:

"Article 9A.

"Private Prosecution of Felony Offense.

"**§ 7A-70. Intent.**

It is the intent of this Article to authorize private prosecutions of felony offenses. It is the further intent of this Article to provide that the discretion to prosecute a felony is not limited to the district attorney, and to provide that a private party may retain private counsel on behalf of a crime victim to submit a bill of indictment to a grand jury and to prosecute a felony. The procedures for prosecuting a criminal offense set out in this section are in addition to those provided under Article 9 of this Chapter and do not limit those procedures in any way.

"**§ 7A-70.1. Private counsel may prosecute felony offense.**

(a) Notwithstanding any other provision of law, an attorney licensed to practice law in North Carolina may submit a bill of indictment charging an offense within the original jurisdiction of the superior court and may prosecute that case if the grand jury returns a true bill of indictment. An attorney retained by a private citizen for this purpose shall be designated a special prosecutor and shall have the same authority and responsibility to prosecute the case as a district attorney.

(b) The provisions of Article 31 of Chapter 15A of the General Statutes shall continue to apply to the submission of a bill of indictment and its consideration by the grand jury, except that the special prosecutor shall carry out the responsibilities of the district attorney.

"**§ 7A-70.2. District attorney to calendar cases prosecuted by special prosecutor.**

A special prosecutor retained under this Article shall provide written notice to the district attorney in a timely manner stating that the special prosecutor has been retained to prosecute a felony offense and requesting the district attorney to calendar the case before the grand jury or on the trial docket as appropriate in accordance with G.S. 7A-61. Upon receipt of the written notice, the district attorney shall calendar the case as provided by G.S. 7A-61.

"**§ 7A-70.3. State is not financially liable for compensation of special prosecutor; other funds available.**

(a) Public funds shall not be used to pay for legal services rendered by a special prosecutor who submits a bill of indictment or prosecutes an offense under this Article. The State is not financially responsible or liable for the services rendered by a special prosecutor under this Article.

(b) Notwithstanding subsection (a) of this section, the ordinary and usual state funds necessary for the proper administration of a criminal prosecution in superior court shall be available.

"**§ 7A-70.4. Concurrent prosecutions prohibited.**

If the district attorney is prosecuting a defendant for a felony offense, then a special prosecutor shall not prosecute the defendant for the same offense. If a special prosecutor is prosecuting a defendant for a felony offense, then the district attorney shall not prosecute the defendant for the same offense."

SECTION 2. Section 18 of Article IV of the North Carolina Constitution reads as rewritten:

"**Sec. 18. District Attorney and Prosecutorial Districts.**

(1) District Attorneys. The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his ~~district,~~ district except as otherwise provided by law, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State."

SECTION 3. The amendment set out in Section 2 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 authorizing the General Assembly to provide that attorneys other than the district attorney may prosecute criminal actions in the Superior Courts on behalf of the State."

SECTION 4. If a majority of votes cast on the question are in favor of the amendments set out in Section 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

SECTION 5. Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendment set forth in Section 2 of this act. If the constitutional amendment proposed in Section 2 of this act is approved by the voters, Section 1 of this act shall become effective at the same time as the constitutional amendment.

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 33:
Private Prosecution/Felony Offenses

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Paul Luebke (By Request)
Date:	March 11, 2003		
Version:	H33-CSSA-1[v.1]	**Summary by:**	Susan L. Sitze Committee Counsel

SUMMARY: ***House Bill 33 would authorize private prosecution of felony offenses and amend the North Carolina Constitution to do the same.***

CURRENT LAW: Currently, only the elected district attorney has the authority to prosecute in Superior Court.

BILL ANALYSIS: House Bill 33 would create new statutes and amend the North Carolina Constitution to allow the private prosecution of felony offenses.

Section 1 of the bill creates a new Article 9A in Chapter 7A of the General Statutes. The new article authorizes the private prosecution of felony offenses. Under the new statutes, a private citizen may retain a private attorney to prosecute a felony offense.

G.S. 7A-70.1 authorizes a private attorney, hired by a private citizen, to submit a bill of indictment charging an offense within the original jurisdiction of the superior court to the grand jury and to prosecute that case if the grand jury returns a true bill of indictment. Any attorney retained by a private citizen under this section shall be designated a special prosecutor and shall have the same authority and responsibility to prosecute the case as a district attorney. The existing grand jury procedures of Article 31 of Chapter 15A will apply, except the special prosecutor will carry out the responsibilities of the district attorney.

G.S. 7A-70.2 requires a special prosecutor to provide timely written notice to the district attorney that the special prosecutor has been retained and asking the district attorney to calendar the case before the grand jury or on the trial docket, as appropriate. Upon receipt of the notice, the district attorney shall calendar the case.

G.S. 7A-70.3(a) provides that public funds shall not be used to pay for legal services rendered by a special prosecutor who submits a bill of indictment or prosecutes an offense under these provisions. The State is not financially responsible or liable for the services rendered by a special prosecutor under these provisions. G.S. 7A-70.3(b) provides that notwithstanding subsection (a), the ordinary and usual state funds necessary for the proper administration of a criminal prosecution in superior court shall be available.

G.S. 7A-70.4 prohibits concurrent prosecutions by the district attorney and a special prosecutor for the same offense.

Section 2 of the bill sets forth an amendment to Section 18 of Article IV of the North Carolina Constitution. The new language places responsibility for superior court prosecutions on the district attorney "except as otherwise provided by law".

Section 3 of the bill provides that the constitutional amendment set out in Section 2 shall be submitted to the voters of the State at the next statewide general election. This section also states the exact question that will be on the ballot.

Section 4 provides that if a majority of the votes cast on the constitutional ballot are in favor of the amendment in Section 2, the State Board of Elections shall certify the amendments to the Secretary of State to be enrolled among the permanent records of that office.

Section 5 provides that the new Article 9A of Chapter 7A (Section 1 of the bill) shall only take effect upon the approval of the constitutional amendment by the voters. If the constitutional amendment in Section 2 is approved then the new statutory language in Section 1 becomes effective at the same time as the constitutional amendment.

Section 6 provides that this act is effective when it becomes law.

House Judiciary I Committee

March 13, 2003

Minutes

The House Judiciary I Committee met on Thursday, March 13, 2003 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, Capps, Harrell, Insko, Miller, Ross and Sexton. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Under consideration by the committee was House Bill 408, AN ACT TO MODIFY THE SECRET PEPPING STATUTE AND TO MAKE CONFORMING CHANGES, (Attachment III). The bill was introduced by Chairman Hackney. He reminded the committee that the bill had also been introduced during the last short session of the General Assembly and that a senator had expressed concern regarding private investigators being able to peep secretly into rooms without its being unlawful, which he noted was already unlawful. He added that the bill did not pass during the short session.

Chairman Hackney said that Ms. Kayley Taber, Assistant District Attorney in Orange and Chatham Counties, had originally suggested the need for the bill. He recognized her to address the committee. Ms. Taber related an experience of a person who was caught with 27 videotapes of young local women in various stages of undress. After identifying some of the women, (which is necessary under current law because there must be a victim in order to prosecute), the man was arrested and prosecuted. The only offense he could be charged with under present law was a Class 1 misdemeanor under which punishment is minimal and is usually probationary. She added that no matter how many times the crime is committed by the same person, it is still a Class 1 misdemeanor. Ms. Taber stated that these people pose a danger people, to their right to feel safe and the right to privacy, and that the issue needs to be addressed. She urged the committee to make secret peeping a Class H felony.

Representative Miller asked about the penalty for a first-time offender for a Class H felony. Ms. Taber replied that a Class H felony can receive anywhere from probationary to active time depending upon the prior conviction level. She said that anyone can receive active time even on his or her first offense for a Class H felony and that time is from 4 months to 8 months.

Representative Miller asked about the issue of private investigators. Ms. Taber responded that in the current state of the law on secret peeping there is no exception for private investigators or law enforcement. She noted that the intent of the bill is to address those who participate in secret peeping for the purpose of sexual gratification.

Chairman Hackney added that it is not against the law for a private investigator to sit across the street and observe who comes in and out of a room, or to photograph the front of a house or a window, etc, but that it is against the law to secretly invade the space.

Representative Capps asked why the bill does not contain a Class H felony for violators of secret peeping.

Chairman Hackney responded that he wanted the committee to decide the penalty.

Mr. Jeff Hunt, Conference of District Attorneys, spoke in support of the bill. He agreed that the penalty should be Class H and that the language should conform to audio recording.

Representative Carolyn Justice was recognized and briefly related the story of a constituent who had been the victim of a secret peeper. She noted that the district attorney from her district of New Hanover and Pender counties would also like to see this bill passed and preferred the Class H penalty.

Mr. Lorin Mueller, NC Coalition of Police and Sheriffs, spoke in support of the bill and the Class H penalty.

Representative Sexton expressed support for a Class H penalty.

Representative Ross expressed concern regarding certain peeping situations, and said that the committee should consider first time offenders before passing a blanket Class H penalty.

Ms. Susan Sitze, Committee Counsel, was recognized for a section-by-section review of the bill. Her bill analysis is attached, (Attachment IV).

Considerable discussion followed.

The meeting adjourned at 10:50 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY MARCH 13, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 408– AMEND SECRET PEEPING LAW
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanne Stevens	Nursing / NCCASA
Carolyn Justice	Representative from Dist 16
Lorin Mueller	NC Coalition of Police
Brian Lewis	Planned Parenthood Health Sys.
Anne White	Atty
Amy Dobson	NC Statewatch.
Peg Dorer	Conference of District Attorneys
Jeff Hunt	Coop of DA's
John Rustin	NCFPC
Greg McLeod	AG ofc.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 408

Short Title:	Amend Secret Peeping Law.	(Public)
Sponsors:	Representatives Hackney; Alexander, Justice, Justus, Stiller, and K. Williams.	
Referred to:	Judiciary I.	

March 12, 2003

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) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do 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, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 408:
Amend Secret Peeping Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	March 13, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 408 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 bill 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 "another 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, while secretly peeping into a 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.

Subsection (e) would provide for a Class I felony for 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 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 I 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 I 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 I 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 one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor and a second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

Subsection (j) would, for a first offense, allow the judge to impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that

evaluation. For a second or subsequent offense, the judge would be required to impose the psychological evaluation and treatment.

Subsection (k) 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 (l) would allow the court to require someone who violates subsections (d), (e), (f), (g), or (h) of this section to register as a sex offender. The court would be allowed to require registration as a sex offender for a second or subsequent violation of subsections (a) or (c) of this section. In determining whether a person shall be required 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 (m) provides exceptions to subsections (a), (c), (e), (g), (h), and (k) of 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, 2003, and applies to offenses committed on or after that date.

House Judiciary I Committee

March 18, 2003

Minutes

The House Judiciary I Committee met on Tuesday, March 18, 2003 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, Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced the appointment of the following members to serve on a subcommittee to study House Bills 27 and 79: Representatives Alexander, Chair, Clary, Daughtry, Harrell and Ross. They were asked to develop a consensus bill and report back to the committee in three weeks.

Chairman Hackney explained House Bill 408, AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES, (Attachment III). Chairman Hackney reminded the committee that this legislation had been explained during the March 13 meeting. The bill analysis prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV). A copy of the fiscal note is attached, (Attachment V).

Representative Carolyn Justice was recognized and introduced Ms. Ashley Council, an attorney from Wilmington. Ms. Council spoke briefly and introduced Ms. Allyson Matta of Wilmington. Ms. Matta was a victim of secret peeping and gave a compelling account of her experience and the lasting effect it has had on her life. A letter that was distributed to the committee from Ms. Matta's brother is attached to the minutes, (Attachment VI).

Representative Capps raised the question as to the strength of the bill asking if the penalty was strong enough and whether abusers should be registered as sex offenders.

Mr. Tim Hovis, Committee Counsel, reviewed the bill and addressed issues raised at the last meeting.

Representative Ross moved to give the bill a favorable report. Representative Capps expressed concern that the proposed penalties are not high enough.

Representative Ross stated that the committee would have to consider the bill section-by-section and issue-by-issue rather than consider a blanket penalty increase.

Chairman Hackney then reviewed the bill section-by-section.

Representative Miller moved to amend the bill on page 2, line 10, by deleting "Class I," and substituting "Class H," a higher charge, (Attachment VII). The amendment was adopted.

Representative Capps moved to amend the bill on page 2, line 4, by deleting "Class I," and substituting "Class H," (Attachment VIII).

Representative Miller addressed the issue of a possible fraternity prank versus a more serious offense.

Ms Council was recognized again and stated that district attorneys would have the discretion to make the difference and she felt comfortable with this.

Upon vote of the committee, the amendment failed.

Representative Alexander moved a favorable report as to committee substitute, unfavorable as to original bill. The motion carried, (Attachment IX). A copy of the committee substitute is attached, (Attachment X).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 18, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 408– AMEND SECRET PEEPING LAW
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Withrow	NC State Watch
C O'Donnell	inside / mainstream media
House of Reps	CSH
Peg Dowe	Conference of D.A.s
Rob McRight	Intern (Rep. Hackney)
Ashley Council	Attorney for Allyson Matta
Allyson Matta	Victim of crime of secret peeping
Carolyn Justice	Rep 16th District
Brandi Davis	WFCT-TV6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 408

Short Title:	Amend Secret Peeping Law.	(Public)
Sponsors:	Representatives Hackney; Alexander, Justice, Justus, Stiller, and K. Williams.	
Referred to:	Judiciary I.	

March 12, 2003

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) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do 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, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 408:
Amend Secret Peeping Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	March 13, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 408 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 bill 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 "another 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, while secretly peeping into a 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.

Subsection (e) would provide for a Class I felony for 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 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 I 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 I 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 I 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 one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor and a second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony.

Subsection (j) would, for a first offense, allow the judge to impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that

evaluation. For a second or subsequent offense, the judge would be required to impose the psychological evaluation and treatment.

Subsection (k) 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 (l) would allow the court to require someone who violates subsections (d), (e), (f), (g), or (h) of this section to register as a sex offender. The court would be allowed to require registration as a sex offender for a second or subsequent violation of subsections (a) or (c) of this section. In determining whether a person shall be required 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 (m) provides exceptions to subsections (a), (c), (e), (g), (h), and (k) of 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, 2003, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: HB 408 2nd Edition

SHORT TITLE: Amend Secret Peeping Law

SPONSOR(S): Representative Hackney

FISCAL IMPACT

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

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
GENERAL FUND					
Correction	Unable to determine exact amount; possible impact on local jails and state prisons.				
Judicial	Unable to determine exact amount; dependent on the degree to which prosecutors charge defendants with new offenses listed in bill and number of repeat offenders.				
TOTAL EXPENDITURES:	Unable to determine exact amount.				
ADDITIONAL PRISON BEDS*	Unable to determine exact amount.				
POSITIONS: (cumulative)	Unable to determine exact amount.				

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

EFFECTIVE DATE: December 1, 2003

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: HB 408 amends G.S. 14-202, which currently provides for a Class 1 misdemeanor for a person secretly peeping into a room occupied by a female. Section 1 of the bill would modify the current language of G.S. 14-202 to significantly expand the scope of the secret peeping law to: (1) expand the scope of current secret peeping law to include male as well as female persons; (2) create a new offense of secretly peeping while possessing a photographic device (Class A1 Misdemeanor); (3) create a new offense of creating a photographic image while peeping (Class I felony); (4) create a new offense of creating a photographic image under clothing (Class I felony); (5) create a new offense of installing a photographic device for purposes of arousing sexual desire (Class I); (6) create a new offense of possessing a photographic image obtained in violation of theses laws (Class I); (7) create a new offenses of disseminating images obtained in violation of this section (Class H felony); (8) to provide that second or subsequent felonies are to be punished 2 class higher; (9) allow for civil cause of action by victims of unauthorized capture of photographic image; (10) allow courts to decide if offender must satisfy requirements of the sex offender registry program; and (11) allow a judge to impose psychological evaluation and treatment on first offenders and requires it for second or subsequent offenses. Section 2 of the bill makes a conforming amendment to the sex offender registration statutes.

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 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. 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.* The number of beds needed will always be equal to the projected number of inmates due to a bill.

During FY 2001-2002, there were 53 convictions for secret peeping. Eleven of these convictions received an active sentence, 2 received an intermediate punishment, and 40 received a community punishment. It is not known how many additional convictions may result from the proposed expansion of the existing offense to include male victims. In FY 2001-2002, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails but paid for by the State at a cost of $18/day. The expansion of the statute to include male victims may result in additional offenders housed in local jails but paid for by the state. Because offenders serving active sentences of 90 days or less are housed in county jails, additional Class 1 misdemeanors are not expected to have a significant impact on the prison population.

HB 402 also introduces six new offenses related to the possessing, using or installing photographic devices or possessing or disseminating of photographic images. Of these new

offenses, one is a Class A1 misdemeanor, four are Class I felonies, and one is a Class H felony. Because these are new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population.

In FY 2001-2002, 20 percent of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served was 55.1 days. It is likely that misdemeanants sentenced under this bill would be housed in local jails but paid for by the State at a cost of $18/day. (Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days). Because only A1 offenders falling in Prior Record Level III receive active sentences that might be served in the state prison system, convictions for this proposed offense would not be expected to have a significant impact on the prison population.

Because the proposed bill creates several new offenses, the Sentencing and Policy Advisory Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill. For example, if there were 10 Class I convictions for any of the four Class I felony offenses listed in HB 408, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. Furthermore, if there were three Class H convictions for disseminating or allowing images to be disseminated per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. In 2001-2002, the statewide average operating cost for one inmate was $62.43/day or $22,786.95/year.

In addition, because offenders of a second or subsequent felony conviction under G.S. 14-102 would be punished one offense class higher than the underlying offense, there could be an additional impact on the prison system. For example, if there were 10 convictions that moved from a Class A1 misdemeanor to a Class I felony, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. While some Class 1 misdemeanants serve active sentences in state prisons, most receive non-active sentences or active sentences that are served in local jails. In contrast, Class I felons serve active state prison sentences, receive intermediate sanctions, or receive community punishment. In 2001-2002, 9 percent of Class I felony offenders were sentenced to active sentences, 37 percent were sentenced to intermediate sanctions, and 54 percent were sentenced to community punishment. On average, offenders served between seven and nine months. Convictions that increase Class A1 misdemeanors to Class I felonies will result in more frequent, longer active sentences served in state prisons rather than local jails.

Furthermore, if there were 10 Class I felonies that were reclassified as Class H felonies, this would result in the need for two additional prison beds the first year and three additional prison beds the second year. In 2001-2002, an average of 33 percent of Class H felony offenders were sentenced to active prison sentences, 51 percent were sentenced to intermediate sentences, and 16 percent were sentenced to community punishment. On average, offenders served between 9 and 12 months. Because it is likely that offenders may have more than one conviction for violations of G.S. 14-102, there could be an impact on the prison population.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For calendar year 2002, AOC data reveal that 168 defendants were charged with secret peeping under current G.S. 14-202. Because the bill creates a new offense, no data is available from which to estimate the number of additional charges that would occur as a result of this bill. AOC anticipates that the expansion of the bill to include males and the several offenses for the creation, use, possession, and dissemination of photographic devices or images could lead to an increase in new felony and misdemeanor charges. An increase in cost is dependent on the degree to which prosecutors charge defendants with new offenses listed in bill as well as the number of repeat offenders. For offenses that are brought to trial as a Class A1 misdemeanor, the estimated court cost per trial is $2,594. For Class A1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $214. For offenses that are brought to trial as Class I felonies, the estimated court cost is $4,637. For Class I felonies not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $255. Finally, for offenses brought to trial as Class H felonies, the estimated court cost is $5,012. For Class H felonies not brought to trial, and where a guilty plea is entered, the estimated cost per guilty plea is $283.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Nicole Kreiser
and
Jim Mills

APPROVED BY: James D. Johnson, Director Fiscal Research Division

DATE: March 19, 2003

ATTACHMENT VI

3/15/03

To Whom It May Concern,

My name is Chad Matta. In my life I hold several titles; the ones I take most serious are, HUSBAND, SON, and BROTHER. I am writing this letter to share some facts concerning Allyson Matta, the only person in this world that addresses me as BROTHER. My sister and I are only 13 months apart, hence we have always been close. We were reared in a very close Family and in a small town. We also attended the same college, Appalachian State University, which we remained close and often depended on each other. All these facts are ingredients that make Allyson Matta the sister she is today and the reason I hold the title as BROTHER with reverence.

There are other ingredients that make Allyson Matta the sister and the person she is today. I would like to share an incident that I know she will never forget and will most likely not like being reminded.... She was in grammar school. She was wearing a dress. It was recess. A boy thought it would be funny to lift her dress in front of everyone. She was embarrassed and scared that day beyond any thrills that young boy might have gotten. I rememer as a brother wanting to
punch that boy for hurting my sister. To fight back...to take a stand...to defend her. It left a scar on her that never quite healed; I do not ever remember her wearing a dress to school after that incident....

I remember my sister getting ready to go to her high school prom in a lavish dress that she looked beauitful wearing. I remember again wanting to punch that little boy on that recess playground.

Don't get me wrong.....its not like she wasn't outgoing or successful. Roanoke Rapids High displays an athletic trophy in her honor still today in its acclaimed showcase. All-Academic-All- Conference in everything she did. She won scholarships.

At Appalachian, Allyson accepted a Resident Assistant (RA) position in a dormatory her sophmore year. She maintained this position throughout her years at school. This position required leadership, personal skills, and trust. I was always amazed at the relationships she maintained with the girls on her hall. She still today has a following of friends from each year that visit her in Wilmington still today.

Ironically, last year one of her friends that lived on her hall at ASU came to Wilmington to work and Allyson agreed to roomate with her. In making space for her new roomate she found a hidden camera spying into her bathroom. This camera was wired from her landlord upstairs. I am reminded of years ago a young girl on a recess playground. Again... she was embarrassed and scared that day beyond any thrills that man might have gotten. As a brother, I wanted to punch that man for hurting my sister. To

fight back... to take a stand...to defend her. I'm afraid that it has left another scar on my sister that never quite will heal. If my sister never could wear a dress again to school, how could she be able to find a place to live and carryout a normal life without ever wondering if her privacy is being violated?

There is a void of trust in my sister now that goes against the person she has always been and that has built the relationships and freindships that surround and comfort her today. There is a nervous energy in her now that was not present in her when she spent four years at Roanoke Rapids high leading her basketball, softball and tennis teams to victories. This nervous energy was not in her when she was entrusted by the lives of new college-bound hopefuls. Since this peeping incident, this nervous energy is now with her as a young single women in todays world trying to make a living and trying to find her life mate. I am worried that she has lost the ability to trust someone socially, professionally, and more important, intimately.

My sister, being of high morals, decided to look for healing not from drugs or therapists, but from her christian roots. She is pursuing spirtual healing as she looks to her close family for comfort and support and she looks to her community churches for healing.

As a christian she looks to the lord for guidance, As a victim she looks to democracy for justice, and As a citizen she looks to society for support.

My sister is crusading for stricter punishment for privacy violators and WE as a government and a society must support her. Peeping violations alter a victims personality and attributes. Violators pay such a meanial price compared to their victims permanent scars. In my sisters incident, her previous landlard still may have video tapes of her and who knows where or who may be viewing them using todays technology. If his actions were classified as a felony, these incriminating tapes would have been confiscated and my sister would not have to live in fear that whatever acts done in the privacy of her bathroom would not be in jeopardy of the internet. Guilty violators should not have the same freedoms of innocent people. As Husbands, Sons, or Brothers, we must defend our Wives, Daughters, and Sisters.... not with the proverbial punch in the mouth but with civilized laws that prevail justice to victims and protect the innocent.

My sister has 31 years to look back and reflect on; none of which she can change. She also has the rest of her life ahead of her;. of which we all can make the difference.

Regards,

Chad Matta

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VII

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 408 DATE 3/18/03

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

COMMITTEE SUBSTITUTE _____

Rep.) Miller
)
Sen.)

moves to amend the bill on page 2, line 10

( ) WHICH CHANGES THE TITLE

by deleting "Class I" and substituting "Class H."

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. 1st

H. B. No. 408 DATE 3/18/03

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Capps
Sen.)

1 moves to amend the bill on page 2, line 4
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "Class I" and substituting
4 "Class H."
5
6
7
9
10
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12
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14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT IX

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. 408 A BILL TO BE ENTITLED AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES.

☐ 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 2003

H D

HOUSE BILL 408
PROPOSED COMMITTEE SUBSTITUTE H408-PCS80128-RG-1

Short Title: Amend Secret Peeping Law. (Public)

Sponsors:

Referred to:

March 12, 2003

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 H 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) The provisions of subsections (a), (c), (e), (g), (h), and (k) of this section do 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, 2003, and applies to offenses committed on or after that date.

HOUSE JUDICIARY 1 COMMITTEE

Minutes

March 20, 2003

The House Judiciary 1 Committee met on Thursday, March 20, 2003, 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, Capps, Daughtry, Harrell, Insko, Miller Ross, West, and Wood. A copy of the Agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney recognized Representative Alexander to explain House 461, AN ACT TO DELAY THE EFFECTIVE DATE OF THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT, (Attachment III). She stated that the bill would delay the appointment of board members to the North Carolina Interpreter and Transliterator Licensing Board.

Committee members were provided a bill analysis prepared by Erika Churchill, Committee Counsel (Attachment IV).

Representative Ross moved a favorable report. The motion carried, (Attachment V).

Representative Alexander was recognized for an explanation of House Bill 475, AN ACT TO AMEND THE STATUTE PERTAINING TO REGISTRATION OF BIRTH AND DEATH CERTIFICATES, (Attachment VI). Representative Alexander explained that this bill amends the statute pertaining to registration of birth and death certificates to authorize that they may be written or typed in blue ink as well as black. The previous statute required them to be written or typed only in black.

A bill analysis, prepared by Ms. Churchill is attached, (Attachment VII).

Representative Wood moved to give the bill a favorable report. The motion carried, (Attachment VIII)

In the absence of the sponsor, Chairman Hackney asked Committee Counsel Tim Hovis to explain House Bill 379, AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION, (Attachment IX).

Mr. Hovis said that the bill would require any dependent under the age of 18 at the time of sentencing, who has not obtained a high school diploma or general education development diploma (GED), to enroll in an adult high school program or GED program. He said that the requirement would only be imposed as a condition of intermediate

punishment or community punishment, or as a regular condition of probation. He said that a judge may waive this if he finds that it causes undue hardship. He further stated that the defendant would be required to maintain enrollment until the end of the term of his punishment, or the completion of the program.

A bill analysis prepared by Mr. Hovis is attached, (Attachment X).

Chairman Hackney noted that many judges are currently handing down similar punishment, but that it is discretionary and that the bill would make it mandatory unless there is a reason to not do so.

Representative Ross stated that she liked the bill, but that it should be written in a way that would insure that children under the age of 16, who are bound over, are not caught up in a situation where they are not technically eligible for the GED program or adult high school. The staff offered some possible solutions to the wording of the bill to address her concern.

Representative Daughtry asked if there might be a constitutional problem with the bill.

Mr. Hovis replied that judges may currently order this, so he did not think there was a constitutional issue

Representative Daughtry stated that he thought a judge could only do two things: either fine the defendant, or sentence them to prison.

Ms. Susan Sitze, Committee Counsel, stated that at one time, probation had to be with the consent of the defendant, but it was changed a few years ago to where a judge can order probation even if the defendant does not consent to the probation.

Representative Daughtry asked what the alternative would be if the defendant refused to enroll in school.

Ms. Sitze replied that this would be a violation of their probation.

Representative Wood asked if there was an age restriction relative to enrollment in GED programs and adult high school programs.

Representative Insko noted that there might be an alternative school in the district that might serve as an option if a defendant is not appropriate for a GED or high school.

Representative Miller expressed support for the bill, but agreed with an alternative school choice rather than having those students placed back into the same school after having been suspended.

Representative Capps also expressed support for the bill, but asked if there might be programs in place in the state that would not incur any cost to the state. He noted that a fiscal note should be made available.

Chairman Hackney directed staff to request a fiscal note.

Considerable discussion followed. Chairman Hackney stated that the bill would be held over.

Chairman Hackney told the Committee that he had received complaints concerning the passing of House Bill 408, AN ACT TO MODIFY THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES, which had received a favorable report as to committee substitute at the March 18 Committee meeting. He said that the complaints had come from private investigators who investigate, among other things, cases of neglect of children or the elderly and feel they should be excluded from the anti-peeping law.

At the recommendation of Chairman Hackney it was decided that the bill should be brought back before the Committee and allow interested private investigators to hear the explanation of the bill. He noted that the bill had not been reported out because the committee substitute was still being prepared.

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY, MARCH 20, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 379 – EDUCATIONAL CONDITIONS TO PUNISHMENT
REPRESENTATIVE BELL

HOUSE BILL 461 – INTERPRETER LICENSURE EFFECTIVE DATE
REPRESENTATIVE ALEXANDER

HOUSE BILL475– REGISTRATION OF BIRTH & DEATH CERTIFICATES
REPRESENTATIVE ALEXANDER

ATTACHMENT II

VISITOR REGISTRATION SHEET

Judiciary 1
Name of Committee

3/20/03
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bourdeau	self
Bob McKnight	Intern (Rep. Hackney)
Amy Dobson	NC Statewatch.
Mike Carr	NC Bar Association
Hal Miller	NCACCT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 461

Short Title:	Interpreter Licensure Effective Date.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Judiciary I.	

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO DELAY THE EFFECTIVE DATE OF THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90D-5(b) reads as rewritten:

"(b) Composition and Terms. – The Board shall consist of nine members who shall serve staggered terms. The initial Board members shall be selected on or before ~~January 1, 2003,~~ July 1, 2003, as follows:

(1) A member of the North Carolina Association of the Deaf (NCAD) who is deaf and familiar with the interpreting process. This member shall be appointed by the Governor and serve for a term of two years.

(2) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc., (NCRID) with five years experience in a community setting and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the Governor and serve for a term of three years.

(3) An employee of the North Carolina Department of Health and Human Services. This member shall be appointed by the Governor, upon recommendation of the Secretary of the Department, and serve a term of three years.

(4) An interpreter or transliterator for deaf-blind individuals who is licensed to practice as an interpreter or transliterator under this Chapter or a deaf-blind individual who is a member of the North Carolina Deaf-Blind Association and who has knowledge of the interpreting process. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years.

(5) A cued speech or oral transliterator licensed to practice as an interpreter or transliterator under this Chapter. This member shall be

appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of two years.

(6) A member of Self Help for Hard of Hearing (SHHH) with knowledge of the interpreting process and deafness. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years.

(7) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc., (NCRID) with five years experience in an educational setting in grades K-12 and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve for a term of two years.

(8) A faculty member of an Interpreter Training Program (ITP), an Interpreter Preparation Program (IPP), or a qualified or professional certified instructor of the American Sign Language Teachers Association (ASLTA). This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve for a term of two years.

(9) A public member. This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve a term of two years. For purposes of this section, a public member shall not be licensed under this Chapter or have an immediate family member who is deaf or hard-of-hearing.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms."

SECTION 2. Section 7 of S.L. 2002-182 reads as rewritten:

"**SECTION 7.** A person practicing interpreter or transliterator services on the effective date of this act who submits the following evidence to the Board and pays the required fee ~~within 18 months of the effective date of this act,~~ on or before December 31, 2004, shall be licensed without having to satisfy the requirements of subdivision (a)(3) of G.S. 90D-7 as enacted in Section 1 of this act:

(1) Evidence that the person meets the qualifications in subdivisions (a)(1) and (a)(2) of G.S. 90D-7.

(2) Evidence that the person has been actively engaged as an interpreter or transliterator in this State for at least 200 hours for each of the two years immediately preceding the effective date of this act. The evidence must be verified in writing by sources approved by the Board.

(3) Two letters of recommendation from sources approved by the Board.

(4) A fee of seventy-five dollars ($75.00) for the registration. This fee shall be in lieu of the fee for a license authorized in G.S. 90D-10 of the act.

A person who obtains a license by meeting the requirements of this section must comply with the continuing education requirements set by the Board. Any practicing person who does not register with the Board ~~within 18 months of the effective date of this act~~ on or before December 31, 2004, shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 90D, enacted by Section 1 of this act."

SECTION 3. Section 10 of S.L. 2002-182 reads as rewritten:

"**SECTION 10.** G.S. 90D-5 and G.S. 90D-6, as enacted in Section 1 of this act, and Sections 7, 8, 9, and 10 of this act are effective when the act becomes law. The remainder of the act becomes effective ~~July 1, 2003.~~January 1, 2004."

SECTION 4. Notwithstanding G.S. 150B-21.1(a)(1), the North Carolina Interpreter and Transliterator Licensing Board may adopt temporary rules to implement S.L. 2002-182 until January 1, 2004.

SECTION 5. Sections 1 through 3 of this act become effective October 31, 2002. The remainder of this act is effective when it becomes law.

HB 461:
Interpreter Licensure Effective Date.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Alexander
Date:	March 20, 2003	**Summary by:**	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: ***The bill would make changes to the implementation of the Interpreter and Transliterator Licensure Act, extending the time for the appointment and organization of the licensing board.***

BILL ANALYSIS:

- **Section 1:** Delays the final deadline for the appointment of the North Carolina Interpreter and Transliterator Licensing Board (" the Board") until July 1, 2003.
- **Section 2:** Allows grandfathering to continue from the time of the appointment of the Board until December 31, 2004.
- **Section 3:** Delays the remainder of the effective dates to January 1, 2004.
- **Section 4:** Extends the temporary rulemaking authority until January 1, 2004.
- **Section 5:** Keeps the original October 31, 2002, effective date for the Board and the grandfathering, to cover the possibility of the Board being appointed prior to the enactment of this bill.

BACKGROUND: Session Law 2002-182 created the North Carolina Interpreter and Transliterator Licensing Board and basic licensing requirements. The Board was granted the authority to adopt rules, temporary and permanent, to enforce the act. The Board was to be appointed by January 1st of this year and was given 18 months to be up and running. The Board has not yet been appointed.

Similar legislation granting additional time for appointment and organization was enacted for the Locksmith Licensing Board in 2002. S.L. 2002-63.

EFFECTIVE DATE: The bill would become effective when it becomes law.

* Mary Shuping 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. 461 A BILL TO BE ENTITLED AN ACT TO DELAY THE EFFECTIVE DATE OF THE INTERPRETER AND TRANSLITERATOR LICENSURE 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 2003

HOUSE BILL 475

Short Title:	Registration of Birth & Death Certificates.	(Public)
Sponsors:	Representatives Alexander; Earle, C. Wilson, Cunningham, and McMahan.	
Referred to:	Judiciary I.	

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTE PERTAINING TO REGISTRATION OF BIRTH AND DEATH CERTIFICATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-97 reads as rewritten:

"**§ 130A-97. Duties of local registrars.**

The local registrar shall:

(1) Administer and enforce provisions of this Article and the rules, and immediately report any violation to the State Registrar;

(2) Furnish certificate forms and instructions supplied by the State Registrar to persons who require them;

(3) Examine each certificate when submitted to determine if it has been completed in accordance with the provisions of this Article and the rules. If a certificate is incomplete or unsatisfactory, the responsible person shall be notified and required to furnish the necessary information. All birth and death certificates shall be typed or written legibly in permanent ~~black or blue-black ink;~~ black, blue-black, or blue ink;

(4) Enter the date on which a certificate is received and sign as local registrar;

(5) Transmit to the register of deeds of the county a copy of each certificate registered within seven days of receipt of a birth or death certificate. The copy transmitted shall include the race of the father and mother if that information is contained on the State copy of the certificate of live birth. Copies transmitted may be on blanks furnished by the State Registrar or may be photocopies made in a manner approved by the register of deeds. The local registrar may also keep a copy of each certificate for no more than two years;

(6) On the fifth day of each month or more often, if requested, send to the State Registrar all original certificates registered during the preceding month; and

(7) Maintain records, make reports and perform other duties required by the State Registrar."

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

HB 475:
Registration of Birth & Death Certificates.

BILL ANALYSIS

Committee: House Judiciary I
Date: March 20, 2003
Version: First Edition

Introduced by: Rep. Alexander
Summary by: R. Erika Churchill
Committee Counsel

SUMMARY: ***The bill would allow the local registrar to accept birth and death certificates written in blue ink.***

CURRENT LAW: The local registrar is the local health director, and is required to transmit a copy of the death or birth certificate to the register of deeds within seven (7) days of receipt by the local registrar. The register of deeds is required to file and preserve the copies of the birth and death certificates furnished by the local registrar. Currently, the local registrar is restricted to accepting for recordation only those birth and death certificates written in black or blue-black ink.

BILL ANALYSIS:

The bill would add the color 'blue' to the colors of ink in which a birth or death certificate may be written and accepted for recordation.

BACKGROUND: The physician declaring the reason of death signs the death certificate. At times, the physicians will use blue ink for the signature. The local registrar nor the register or deeds can accept the death certificate for recordation when signed in blue ink.

EFFECTIVE DATE: The bill would become effective when it becomes law.

2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 475 A BILL TO BE ENTITLED AN ACT TO AMEND THE STATUTE PERTAINING TO REGISTRATION OF BIRTH AND DEATH CERTIFICATES.

☒ 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 2003

H 1

HOUSE BILL 379

Short Title:	Educational Conditions to Punishment.	(Public)
Sponsors:	Representatives Bell; B. Allen, L. Allen, Bonner, Carney, Earle, Glazier, Jones, Rapp, and Wainwright.	
Referred to:	Judiciary I.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17 is amended by adding a new subsection to read:

"(f) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing and who has not obtained a high school diploma or general education development (GED) diploma shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 2. G.S. 15A-1340.23 is amended by adding a new subsection to read:

"(d) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing and who has not obtained a high school diploma or general education development (GED) diploma shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the

term of punishment or until the successful completion of the program, whichever comes first."

SECTION 3. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. Defendants under the age of 18 at the time of sentencing who have not obtained a high school diploma or GED shall enroll in an adult high school program or GED program in order to comply with this subdivision, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S.

15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

SECTION 4. This act becomes effective October 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 379:
Educational Conditions to Punishment

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Bell
Date:	March 19, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 379 would require any defendant under the age of 18 at the time of sentencing who has not obtained a high school diploma or general education development (GED) diploma to enroll in an adult high school program or GED program. This requirement could only be imposed as a condition of intermediate punishment or community punishment or as a regular condition of probation. The sentencing judge may waive this requirement if it would cause undue hardship to the defendant.

BILL ANALYSIS: House Bill 379 amends G.S. 15A-1340.17 (felonies) and G.S. 1340.23 (misdemeanors) to require any defendant under the age of 18 at the time of sentencing who has not obtained a high school diploma or GED diploma to enroll in an adult high school program or GED program. This condition could only be imposed as a condition of community or intermediate punishment.

The bill also amends G.S. 15A-1343 (probation) to impose the same educational requirement as a regular condition of probation for those defendants under the age of 18 at the time of sentencing.

Whether imposed as condition of community or intermediate punishment or as a regular condition of probation, the judge may waive this requirement if it would cause undue hardship to the defendant.

EFFECTIVE DATE: House Bill 379 is effective October 1, 2003 and applies to offenses committed on or after that date.

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION

	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
~~55-75~~	~~56-77~~	~~57-78~~	~~58-79~~	~~59-80~~	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285

231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 20, 21; c. 22, s. 7; c. 24, s. 14(b); 1995, c. 507, s. 19.5(l); 1997-80, s. 3.)

§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars ($200.00) for a Class 3 misdemeanor and one thousand dollars ($1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

(c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described. – Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community ~~punishment~~ is ~~authorized~~; "I" ~~indicates that an intermediate punishment~~ is authorized; and "A" indicates that an active punishment is authorized; and

(2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

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

(1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(g).)

§ 15A-1343. Conditions of probation.

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more

of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or

the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is approved by the Domestic Violence Commission.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –

As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall

include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs to be repaid and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5.

(g) Probation Officer May Determine Payment Schedules. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 8-10; 1979, c. 662, s. 1; c. 801, s. 3; c. 830, s. 12; 1981, c. 530, ss. 1, 2; 1983, c. 135, s. 1; c. 561, ss. 1-6; c. 567, s. 2; c. 712, s. 1; 1983 (Reg. Sess., 1984), c. 972, ss. 1, 2; 1985, c. 474, ss. 1, 7, 8; 1985 (Reg. Sess., 1986), c. 859, ss. 1, 2; 1987, c. 282, s. 33; c. 397, s. 1; c. 579, ss. 1, 2; c. 598, s. 1; c. 819, s. 32; c. 830, s. 17; 1989, c. 529, s. 5; c. 727, s. 218(4); 1989 (Reg. Sess., 1990), c. 1010, s. 1; c. 1034, s. 1; 1991 (Reg. Sess., 1992), c. 1000, s. 1; 1993, c. 538, s. 16; 1994, Ex. Sess., c. 9, s. 1; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.14(c); 1997-57, s. 3; 1997-443, ss. 11A.119(a), 19.11(a); 1998-212, ss. 17.21(a), 19.4(f); 1999-298, s. 2; 2000-125, s. 8; 2000-144, s. 31; 2002-105, s. 3; 2002-126, ss. 17.18(a), 29A.2(a).)

House Judiciary I Committee

March 25, 2001

Minutes

The House Judiciary I Committee met on Thursday, March 25, 2003 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, Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Bell was recognized for a continuation of the discussion of House Bill 379, AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION, (Attachment III). The bill was discussed during the March 20, 2003 meeting of the committee.

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

Representative Bell stated that the committee substitute addresses some of the concerns expressed by the committee during the initial discussion of the bill.

Ms. Susan Sitze, Committee Counsel, was recognized for additional explanation. She called attention to the new language in the committee substitute that would affect students under the age of 16. The bill analysis for House Bill 379 is attached, (Attachment V).

Discussion followed regarding the availability of alternative schools. Concern was expressed about the lack of alternative high schools in some counties.

Representative Capps asked if judges would be allowed to offer alternatives. It was noted that this was already being done.

Representative Wood questioned the number of students involved

Representative Ross offered an amendment, (Attachment VI) that would rewrite line 24 of page 1 to read: "required to enroll in any program pursuant to this subsection, or currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, and moved its adoption. The motion carried and the amendment was adopted.

Tracy Little, Department of Correction, was recognized to commend on the number of people who be involved in this program. She said that as of February 28, 2003, 2,693 students between the ages of 13 and 17 were on probation in school systems/ She commented briefly on the level of education attained by those students.

Representative Ross moved that the amendment be incorporated into a new committee substitute, that it be given a favorable report and the original bill an unfavorable report.

Ms. Little was again recognized to comment on the Department of Correction's programs that offer educational opportunities.

The motion for a favorable report for the committee substitute was before the committee. The motion carried, (Attachment VII). A copy of the committee substitute, as reported out is attached, (Attachment VIII).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, MARCH 25, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 379- EDUCATIONAL CONDITIONS TO PUNISHMENT
REPRESENTATIVE BELL

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — March 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCACCT
Brian Lewis	Planned Parenthood Health Sys.
Craig Thorn	Planned Parenthood Central North Carolina
C. Mears	Joe Kiser
Tracy Little	NCDOC
John Goodman	Mercer & Assoc.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 379

Short Title:	Educational Conditions to Punishment.	(Public)
Sponsors:	Representatives Bell; B. Allen, L. Allen, Bonner, Carney, Earle, Glazier, Jones, Rapp, and Wainwright.	
Referred to:	Judiciary I.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17 is amended by adding a new subsection to read:

"(f) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing and who has not obtained a high school diploma or general education development (GED) diploma shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 2. G.S. 15A-1340.23 is amended by adding a new subsection to read:

"(d) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing and who has not obtained a high school diploma or general education development (GED) diploma shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the

term of punishment or until the successful completion of the program, whichever comes first."

SECTION 3. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. Defendants under the age of 18 at the time of sentencing who have not obtained a high school diploma or GED shall enroll in an adult high school program or GED program in order to comply with this subdivision, unless the judge finds that such a requirement would cause undue hardship to the defendant. A defendant required to enroll in such a program shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S.

15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

SECTION 4. This act becomes effective October 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 379
PROPOSED COMMITTEE SUBSTITUTE H379-CSSA-4 [v.1]

3/24/2003 6:13:50 PM

Short Title: Educational Conditions to Punishment. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17 is amended by adding a new subsection to read:

"(f) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing, who has not obtained a high school diploma or general education development (GED) diploma, and is not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subsection at that time. A defendant required to enroll in any program pursuant to this subsection, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 2. G.S. 15A-1340.23 is amended by adding a new subsection to read:

"(d) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing, who has not obtained a high school diploma or general education development (GED) diploma, and is not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subsection at that time. A defendant required to enroll in any program pursuant to this subsection, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 3. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. Defendants under the age of 18 at the time of sentencing who have not obtained a high school diploma or GED and are not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED, shall enroll in an adult high school program or GED program in order to comply with this subdivision, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the

defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subdivision at that time. A defendant required to enroll in any program pursuant to this subdivision, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

SECTION 4. This act becomes effective October 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 379:
Educational Conditions to Punishment

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Bell
Date:	March 19, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 379 would require any defendant under the age of 18 at the time of sentencing who has not obtained a high school diploma or general education development (GED) diploma to enroll in an adult high school program or GED program. This requirement could only be imposed as a condition of intermediate punishment or community punishment or as a regular condition of probation. The sentencing judge may waive this requirement if it would cause undue hardship to the defendant.

BILL ANALYSIS: House Bill 379 amends G.S. 15A-1340.17 (felonies) and G.S. 1340.23 (misdemeanors) to require any defendant under the age of 18 at the time of sentencing who has not obtained a high school diploma or GED diploma to enroll in an adult high school program or GED program. This condition could only be imposed as a condition of community or intermediate punishment.

The bill also amends G.S. 15A-1343 (probation) to impose the same educational requirement as a regular condition of probation for those defendants under the age of 18 at the time of sentencing.

Whether imposed as condition of community or intermediate punishment or as a regular condition of probation, the judge may waive this requirement if it would cause undue hardship to the defendant.

EFFECTIVE DATE: House Bill 379 is effective October 1, 2003 and applies to offenses committed on or after that date.

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of ~~imprisonment~~ is ~~neither~~ aggravated or ~~mitigated; any minimum term~~ of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION

	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285

231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 20, 21; c. 22, s. 7; c. 24, s. 14(b); 1995, c. 507, s. 19.5(l); 1997-80, s. 3.)

§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars ($200.00) for a Class 3 misdemeanor and one thousand dollars ($1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

(c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described. – Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community ~~punishment is authorized~~; "I" ~~indicates that an intermediate punishment~~ is authorized; and "A" indicates that an active punishment is authorized; and

(2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

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

(1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(g).)

§ 15A-1343. Conditions of probation.

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more

of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or

the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is approved by the Domestic Violence Commission.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –

As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(c) Statement of Conditions. – A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) of this section shall pay a supervision fee of thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall

include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(e) Costs of Court and Appointed Counsel. – Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount of those costs to be repaid and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5.

(g) Probation Officer May Determine Payment Schedules. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 8-10; 1979, c. 662, s. 1; c. 801, s. 3; c. 830, s. 12; 1981, c. 530, ss. 1, 2; 1983, c. 135, s. 1; c. 561, ss. 1-6; c. 567, s. 2; c. 712, s. 1; 1983 (Reg. Sess., 1984), c. 972, ss. 1, 2; 1985, c. 474, ss. 1, 7, 8; 1985 (Reg. Sess., 1986), c. 859, ss. 1, 2; 1987, c. 282, s. 33; c. 397, s. 1; c. 579, ss. 1, 2; c. 598, s. 1; c. 819, s. 32; c. 830, s. 17; 1989, c. 529, s. 5; c. 727, s. 218(4); 1989 (Reg. Sess., 1990), c. 1010, s. 1; c. 1034, s. 1; 1991 (Reg. Sess., 1992), c. 1000, s. 1; 1993, c. 538, s. 16; 1994, Ex. Sess., c. 9, s. 1; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.14(c); 1997-57, s. 3; 1997-443, ss. 11A.119(a), 19.11(a); 1998-212, ss. 17.21(a), 19.4(f); 1999-298, s. 2; 2000-125, s. 8; 2000-144, s. 31; 2002-105, s. 3; 2002-126, ss. 17.18(a), 29A.2(a).)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 379 DATE _____

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

COMMITTEE SUBSTITUTE X H379-CSSA-4

(Rep.) Ross
Sen.)

moves to amend the bill on page 1, line 24

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"required to enroll in any program pursuant to this subsection, or currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall maintain that"

and on page 2, line 17

"

and on page 3, line 10

"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 379 A BILL TO BE ENTITLED AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND 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 the committee substitute bill ~~(#), ☐ which changes the title,~~ unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 379
PROPOSED COMMITTEE SUBSTITUTE H379-PCS70192-SA-4

Short Title: Educational Conditions to Punishment. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PURSUIT OF AN EDUCATION A CONDITION OF INTERMEDIATE PUNISHMENT, COMMUNITY PUNISHMENT, AND PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17 is amended by adding a new subsection to read:

"(f) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing, who has not obtained a high school diploma or general education development (GED) diploma, and is not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subsection at that time. A defendant required to enroll in any program pursuant to this subsection, or currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 2. G.S. 15A-1340.23 is amended by adding a new subsection to read:

"(d) Educational Requirement for Defendants Under the Age of 18. – Any judgment that includes community punishment or intermediate punishment for a defendant who is under the age of 18 at the time of sentencing, who has not obtained a high school diploma or general education development (GED) diploma, and is not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall include a requirement that the defendant enroll in an adult high school program or GED program and maintain that enrollment during the course of the punishment, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subsection at that time. A defendant required to enroll in any program pursuant to this subsection, or currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first."

SECTION 3. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. Defendants under the age of 18 at the time of sentencing, who have not obtained a high school diploma or GED and are not currently enrolled in an educational program that would lead to receipt of a high school diploma or GED, shall enroll in an adult high school

program or GED program in order to comply with this subdivision, unless the judge finds that such a requirement would cause undue hardship to the defendant. If the defendant is not eligible, due to the defendant's age, for enrollment in an adult high school program or GED program, the defendant shall be required to enroll in a school or educational program that would lead to receipt of a high school diploma, unless the court finds that there is no available program for which the defendant is currently eligible. If the court finds that there is no program for which the defendant is currently eligible, the defendant shall be required to enroll in an adult high school program or a GED program upon reaching the required age, if the defendant is still subject to the conditions of this subdivision at that time. A defendant required to enroll in any program pursuant to this subdivision, or currently enrolled in an educational program that would lead to receipt of a high school diploma or GED diploma, shall maintain that enrollment until the end of the term of punishment or until the successful completion of the program, whichever comes first. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

SECTION 4. This act becomes effective October 1, 2003, and applies to offenses committed on or after that date.

House Judiciary I Committee

April 1, 2001

Minutes

The House Judiciary I Committee met on Tuesday, April 1, 2003 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, Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Members and visitors were welcomed and the pages were recognized.

Representative Alexander was recognized for an explanation of House Bill 562, AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS, (Attachment III). Representative Alexander explained that the local bill would authorize the City of Charlotte to use photographic speed-measuring systems during a pilot program and allow the city to establish civil penalties for speed limit and school zone speed limit violations. She noted that the measuring systems would be used in designated corridors and would be calibrated pursuant to standards adopted by the North Carolina Criminal Justice Education and Training Standards Commission. She said that a fine of $50 would be assessed to violators.

Representative Rhodes, also a primary sponsor, was recognized and offered additional comments regarding the bill and asked that the committee also give consideration to the medical community's side of this legislation. He commented on the deaths and needless injuries that result in excessive speeding.

Representative Daughtry asked what happens when a vehicle is owned by a corporation and that corporation's driver receives a ticket.

Ms. Susan Sitze, Committee Counsel, was recognized to give further explanation of the bill. In response to Representative Daughtry's question, she said that as far as how the tickets are handled, the bill is very similar in procedure to the red light camera bills. She said that if a corporation owns the vehicle, the corporation will receive the ticket in the mail. If the corporation identifies the person who was driving the vehicle and gives the information to the city, the corporation, itself, would be relieved of the liability and

the city would then pass the ticket on to the person who was driving the vehicle at that time. She noted that the equipment would typically be vans that are set up with detection equipment set up within them. There would be a sworn law enforcement officer inside who monitors the equipment at the time it is being used. She said that identifying signs would be erected no more that 1000 feet away from each location where a system is installed or in use. A bill analysis prepared by Ms. Sitze is attached, (Attachment IV).

Chairman Hackney questioned the response regarding the liability of a corporation when an employee is driving the corporation's vehicle.

Ms. Sitze called attention to subsection (e) on page 2 dealing with the enforcement provisions. Chairman Hackney replied that the language indicates that the corporation would still be responsible.

Representative Sexton asked if any "grace" was built into the legislation.

Ms. Sitze replied that there is no set speed in the bill. She said that generally there are guidelines as to how fast one must be going before they are determined to be in violation.

Ms. Sitze stated that tickets may be challenged and request can be made for an administrative hearing. If not challenged, or if the fine is not paid, an additional $50 penalty can be added to the fine.

Chief Darrel Stephens, Chief, and Major Tim Stewart, Charlotte Mecklenburg Police Department, was recognized for a power presentation that provided background date for the speed-measuring system. Following the presentation, Chief Stephens and Office Charlie Brown responded to questions. A copy of the presentation is attached, (Attachment V)

Representative Sexton again asked if the program allowed for any "grace" with regard to the speeders. Officer Brown responded that this was taken into consideration.

Considerable discussion followed regarding the error rate, the number of cars photographed, and questions regarding the use of the fines.

Representative Alexander stated that a portion of the money would be used to pay for the vendors who process the film and that the remainder would go to the police department's traffic safety program.

Chairman Hackney questioned whether this might be a fine or forfeiture issue under the Constitution and discussion regarding this followed.

Representative Miller requested data regarding the effectiveness on safety that has been developed by other cities in the country that might be using this system.

Chief Stevens replied that the department did have such data, and that everywhere that the system has been deployed it has had an impact on reducing average speeds and reducing crashes.

No action was taken on the bill and the meeting adjourned at 11:00 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 1, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 562 – CHARLOTTE PHOTO SPEED MEASURING SYSTEMS
REPRESENTATIVES ALEXANDER AND RHODES

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Stewart, Major	Charlotte-Mecklenburg Police 601 East Trade St. Charlotte
Darrel Stephens, chief	CMPD
Boyd Cauble	City of Charlotte
CHARLIE BROWN	CHARLOTTE MECKLENBURG POLICE
Joe McClees	ACS
Beau Mills	NC Metropolitan Coalition
P.H. DAUGHTRY, III, P.E.	NCDOT - TRAFFIC
Phil Davidson	CCBCC
Jane Pinsky	AAA Carolina
BERRY JONKINS	CAROLINAS AGC
CHRIS MEARS	REP. KISER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cathy Wright	self - 5131S Eastchurch, Chapel Hill
Bob Dasaklas	NC State Univ
John Goodman	Mercer & Assoc.
Patricia Remer	NCACC
Ken Kinion	AIG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 562

Short Title:	Charlotte Photo Speed Measuring Systems.	(Public)
Sponsors:	Representatives Alexander, Rhodes (Primary Sponsors); Cunningham and Earle.	
Referred to:	Judiciary I.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

ATTACHMENT IV

HOUSE BILL 562:
Charlotte Photo Speed Measuring Systems

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Martha Alexander
Date:	April 1, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 562 would authorize the City of Charlotte to use photographic speed-measuring systems during a three year pilot program in designated corridors. The bill would allow the City to establish civil penalties for speed limit and school zone speed limit violations.***

BILL ANALYSIS: Section 1 of the bill creates a new G.S. 160A-300.2 which authorizes municipalities to adopt ordinances for the civil enforcement of speed limit and school zone speed limit violations through the use of photographic speed measuring systems. A photographic speed measuring system is a "speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction".

The speed measuring systems would be calibrated pursuant to standards adopted by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety and would be monitored by a sworn law enforcement officer at all times that the system is actively in use. Any system installed or in use shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of the system.

The owner of a vehicle photographed is responsible for the violation unless the owner furnishes evidence within 21 days of notification of the violation that, at the time of the offense, the vehicle was under the care, custody or control of another person or that the vehicle had been stolen or was otherwise in the care, custody or control of a person without permission to use the vehicle. The violation is noncriminal and a civil penalty of $50 is assessed. In addition, no license or insurance points may be assigned to the owner or the driver of the vehicle.

The citation will be mailed to the owner. Personal service is not required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to an additional penalty not to exceed $50.00.

The municipality must institute a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed. An administrative hearing decision shall be subject tot review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed measuring systems.

Section 2 of the bill sets for the criteria under which the results of the use of a photographic speed measuring system are admissible as evidence in a nonjudicial administrative hearing held pursuant to Section 1 of this bill for the purpose of establishing the speed of the vehicle.

In order for the results of a photographic speed measuring system to be admissible all of the following criteria must be met:

- The photographic speed measuring system was approved by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety.
- The photographic speed measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.
- At the time the results were obtained, the photographic speed measuring system was being monitored by a sworn law enforcement officer.

Section 3 of the bill amends G.S. 17C-6(a) to authorize the North Carolina Criminal Justice Education and Training Standards Commission, in conjunction with the Secretary of Crime Control and Public Safety, to approve use of specific models and types of photographic speed measuring systems and establish the standards for calibration and testing for accuracy of each approved system.

Section 4 restricts the application Section 1 of this bill to the City of Charlotte and the use of the photographic speed measuring system to 14 specifically identified corridors within the City of Charlotte.

This act is effective July 1, 2003 and expires June 30, 2006.

Vehicle Crash Reduction Program



Photo Radar Speed Enforcement

The Impact of Speeding

- Nationally
  - Speed – 30% Fatal Crashes
  - 86% Speed Fatalities off Interstates
- NC 4th in Speed Fatalities
- Mecklenburg County
  - $300 million annual cost of speed related crashes
  - CMPD investigates nearly 27,000 crashes per year

The Impact of Speeding

- Mecklenburg County
  - 2001- 42% of vehicle crash deaths speed related
  - Speed 2nd most frequent crash violation
  - Leads NC - crashes per 1000 people



Mecklenburg County Speeding

- CMPD speed citations increased 75% since 1999 – 33,000 in 2001
- Poll – 79.2% - stricter enforcement
- Poll – 50% approve photo radar



Photo Radar

- Widely Used Technology
  - 16 cities across North America
  - Many in Europe
- United States
  - National City, CA - 50% reduction in crashes over 5 years
  - 30% drop in speeding after 8 deployments in Portland, OR
  - Mesa, AZ - 20% speed reduction in monitored locations

Photo Radar Proposal

- Focus on 14 high crash corridors
- Improved Productivity
- $50 Citation
- Civil penalty - no points assessed
- Separate appeal process
- Court system is not involved

High Crash Locations

- Crash report data
- Designated Charlotte DOT

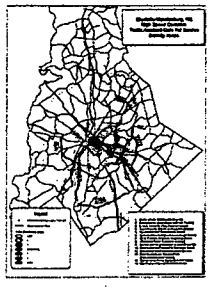


PHOTO RADAR

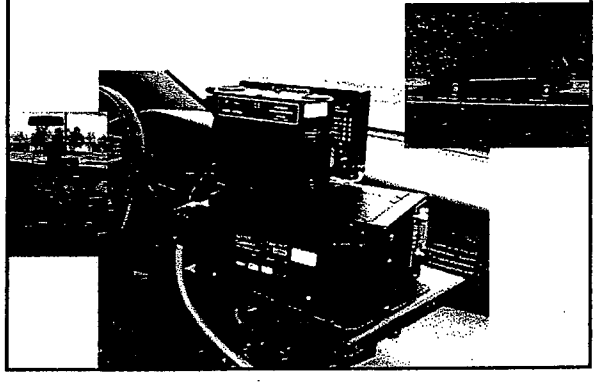
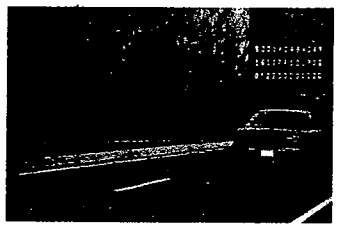


Photo Radar Picture



*License plate intentionally blurred because of test photo.

Photo Radar

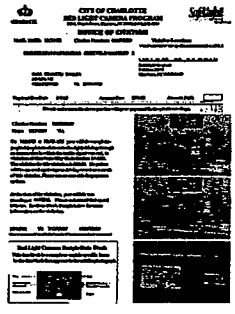
- Doppler radar antenna
- High speed camera/flash unit
- One photograph every .5 seconds
- Computer records infraction data
  - Date, time, speed and location of the violation

Photo Radar

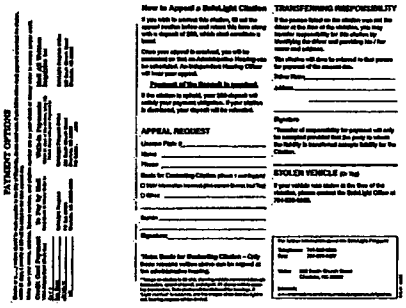
- Same principles as current radar
- System is mobile
- Police officer operates unit
  - set up
  - establish thresholds
    - posted speed limit,
    - weather, time of day,
    - normal speed patterns,
    - crash data



Sample Photo Radar Ticket



Sample Photo Radar Ticket



Crash Reduction Program Partners

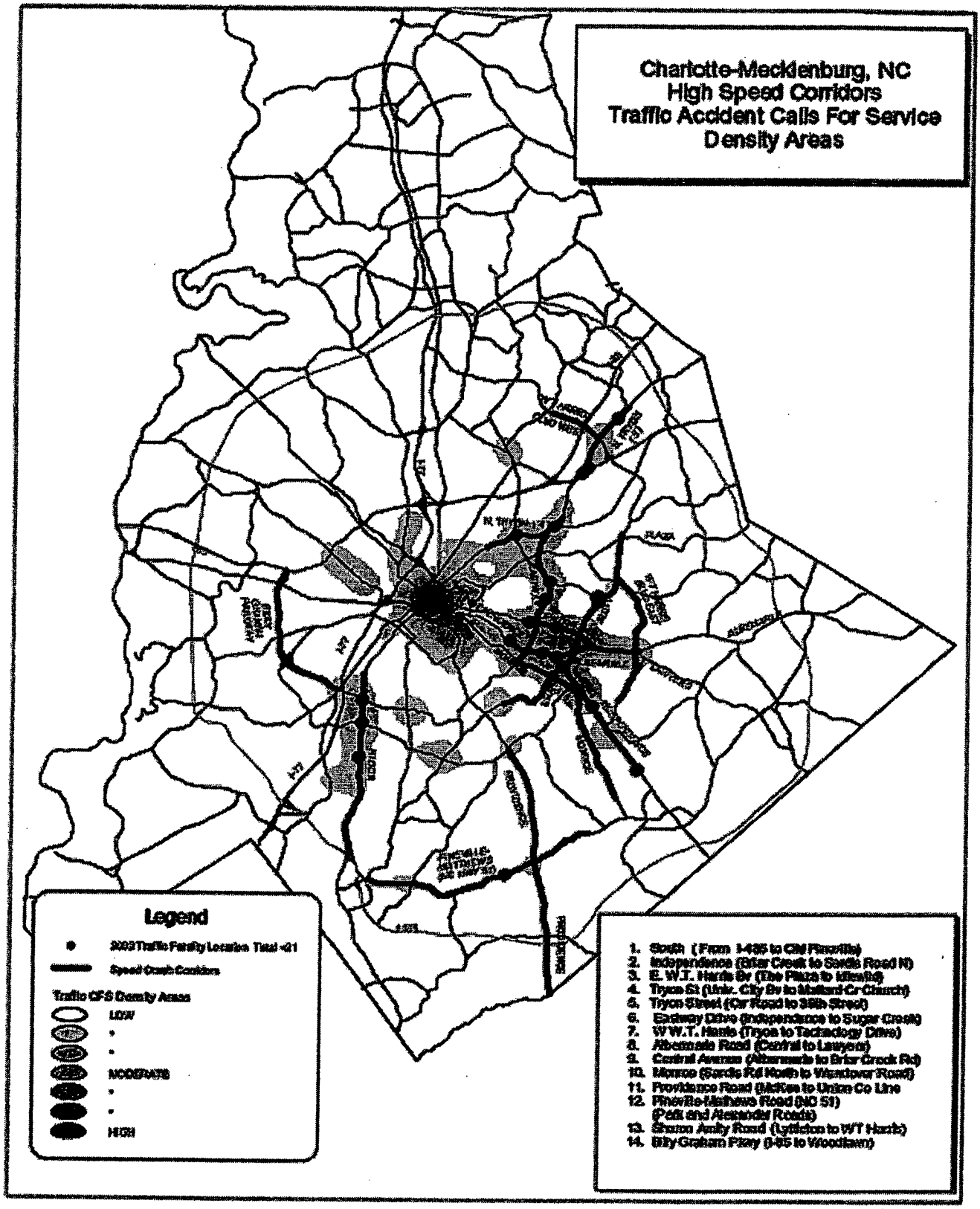
- Charlotte DOT
- Carolinas Healthcare System
- Safe Communities Program
- MADD
- Take the Pledge
- Mecklenburg County DA MEDIC
- Presbyterian Hospital
- NC Police Chiefs Association
- NC Metro Chiefs

CONTACTS

•Boyd Cauble, City Manager's Office 704-336-2009 bcauble@ci.charlotte.nc.us

•Major Tim Stewart 704-336-2328 tstewart@cmpd.org

•Captain David Haggist 704-336-4197 dhaggist@cmpd.org


Charlotte-Mecklenburg, NC
High Speed Corridors
Traffic Accident Calls For Service
Density Areas
Legend
2003 Traffic Fatality Location Total =21
Speed Crash Corridors
Traffic CFS Density Areas
LOW
MODERATE
HIGH
1. South (From I-485 to Old Pineville)
2. Independence (Briar Creek to Sardis Road N)
3. E. W.T. Harris Blv (The Plaza to Idlewild)
4. Tryon St (Univ. City Blv to Mallard Cr Church)
5. Tryon Street (Cor Road to 36th Street)
6. Eastway Drive (Independence to Sugar Creek)
7. W W.T. Harris (Tryon to Technology Drive)
8. Albemarle Road (Central to Lawyers)
9. Central Avenue (Albemarle to Briar Creek Rd)
10. Monroe (Sardis Rd North to Woodlawn Road)
11. Providence Road (McRee to Union Co Line
12. Pineville-Mathews Road (NC 51)
(Polk and Alexander Roads)
13. Sharon Amity Road (Lyttleton to W/T Harris)
14. Billy Graham Pkwy (I-85 to Woodlawn)

Speed Related Crash Corridors

South Blvd. between I-485 and Scaleybark

Independence between Briarcreek and Sardis Rd. North

East W.T. Harris between The Plaza and Idlewild

Tryon St. from 36th to Orr rd. and

Tryon from Mallard Creek Church Rd. and University City Blvd.

Eastway between Independence and Sugar Creek

West W.T. Harris between N.Tryon and Technology Dr.

Albemarle Rd. between Independence and Lawyers

Central between Albemarle and Briar Creek

Monroe rd. between Sardis Rd. North and Wendover

Providence between McKee and Providence Country Club

Highway 51 between Park Rd. and Alexander Rd.

Sharon Amity between Lyttleton Dr and East W. T. Harris

Billy Graham Parkway between I-85 and Woodlawn

House Judiciary I Committee

April 3, 2003

Minutes

The House Judiciary I Committee met on Thursday, April 3, 2003 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 Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton and West. A copy of the agenda is attached, (Attachment I).

Ms. Susan Sitze, Committee Counsel, was recognized to explain Senate Bill 440, 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 II). She said that the bill would allow a judge to issue an order of arrest for a person who fails to appear in court where the person had received a citation charging a misdemeanor offense. She distributed a bill analysis, (Attachment III) that provided additional background.

Representative Wood asked about the current procedure used by the courts. Ms. Sitze replied that currently there is little that can be done when someone fails to appear except to set a later court date. She added that with regard to motor vehicle offenses, failure to appear could result in the loss of one's license.

Representative Alexander stated that the bill had started out as a local bill, but had later become a statewide bill.

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

The meeting was adjourned at 10:25 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 3, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 440 – FAILURE TO APPEAR /CITATION
SENATOR CLODFELTER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 440*

Short Title:	Failure to Appear/Citation.	(Public)
Sponsors:	Senators Clodfelter; and Dannelly.	
Referred to:	Judiciary I.	

March 17, 2003

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 440:
Failure to Appear/Citation.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	April 3, 2003	**Summary by:**	H. Alan Pell, Staff Attorney Susan L. Sitze, Committee Counsel
Version:	First Edition		

SUMMARY: ***This bill would allow a judge to issue an order of arrest for a person who fails to appear in court where the person had received a citation charging a misdemeanor offense. The act is effective when it becomes law.***

CURRENT LAW: The issuance of a citation charging a misdemeanor does not bar a court from issuing a criminal summons or warrant for the charged offense. There is no provision in the statute authorizing the issuance of an order for arrest where a person charged by citation with a misdemeanor fails to appear in court.

BILL ANALYSIS:

Section 1: This section would amend the statutory provision that allows for a summons or warrant to be issued where a previously issued citation charges a misdemeanor offense. If the person receiving a citation fails to appear in court, the amendment would allow a judicial official to issue an order for arrest for that failure to appear.

Section 2: This section would amend the statutory provision that allows for the issuance of an order of arrest when a person fails to appear, as required by a criminal summons. The amendment would allow an order for arrest of a person who fails to appear, as required by a citation charging a misdemeanor.

Section 3: The act is effective when it becomes law.

BACKGROUND:

- A criminal summons states the crime or infraction of which the person summoned is accused, and orders the person to appear and answer to the charges made against him. Any person authorized to issue warrants for arrest may issue a criminal summons. If the summoned person fails to appear, an order of arrest may be issued. If the failure to appear is willful, the person may be punished for contempt of court.
- A citation is a directive, issued by a law enforcement officer or others authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.
- Other examples where orders for arrest may also be issued:
  - a grand jury has issued a true bill of indictment
  - a defendant who has been arrested, and released on bond, fails to appear
  - a defendant has violated probation conditions
  - in a proceeding where the defendant has become subject to the court's jurisdiction
  - as authorized by statute in connection with material witness proceedings

2003 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
S.B. 440 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 the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

April 8, 2003

Minutes

The House Judiciary I Committee met on Tuesday, April 8, 2003 at 10:00 a.m. in Room 1228 of the Legislative Building. Vice Chair Ross called the meeting to order and the following members were present: Representatives Alexander, Capps, Daughtry, Hackney, Harrell. Insko, Miller, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Vice Chair Ross stated that a subcommittee had recommended a proposed committee substitute for House Bill 79, AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, (Attachment III). This bill was initially explained during the February 27, 2003 meeting of the committee. The committee substitute was distributed, (Attachment IV).

Representative Alexander moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried and the proposed committee substitute was before the committee.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the committee substitute. She said that the subcommittee looked at both House Bill 27 and House Bill 79 during their deliberations. She said that the committee substitute is to House Bill 79, but that it incorporates some of the provisions of House Bill 27. She reviewed the changes in the committee substitute. She noted that the language of House Bill 79 that expanded the samples to not only include blood, but also tissue or oral swab samples was not included in the committee substitute. She said that testimony and comments from various organizations, including the SBI indicated that those samples might not be viable on a long-term basis. Ms. Sitze stated that Section 3 of the bill is a new provision that was suggested by the Sheriff's Association. The provision deals with persons who are not sentenced to a term of incarceration, but are placed on community or intermediate level punishment and are on probation, but were required to give a DNA sample. The new language seeks to clarify how that testing will occur. The changes found in the committee substitute are outlined in the bill analysis, (Attachment V).

Chairman Hackney resumed the chair.

The Honorable Roy Cooper, Attorney General of North Carolina, was recognized to address the committee and spoke in support of the DNA legislation.

Chairman Hackney asked that someone comment on the cost of the DNA program

Mr. Nels Roseland, Finance Officer, NC Department of Justice, said that depending upon the mix of in-house processing or out-source processing, the state appropriation could range from $840,000 for complete in-house processing or $750,000 if out-source processing is used. He said that some of the more significant costs are not just to the Department of Justice, but also to the Department of Corrections who would draw samples. He added that as much as $2.5 million could come from federal funds. He said that if all expenses were in-house staff processing, the cost would be about $1.5 million, including $600,000 in federal funds and $840,000 in state appropriations. If out-sourced with private labs, the total cost would be about $3.3 million with $2.5 million in federal funds and $750,000 from state appropriations.

There was discussion regarding how the DNA database is set up.

Mr. Jerry Richardson, State Bureau of Investigation, responded to questions.

Ms. Chloe Gossage, Fiscal Research Division, was recognized to comment further on the cost of the program.

Representative Daughtry asked if the legislation should not include a "good faith" exclusionary rule in the event that DNA is taken by mistake.

Attorney General Cooper replied that he thought such language was being included in some legislation currently in the General Assembly dealing with all law enforcement "good faith' exceptions, but that he would not like to see such language added to the DNA legislation that might slow it down or prevent its passage.

Representative Ross pointed out that "good faith" language was not necessary to this legislation. She said the NC Supreme Court has said in a DNA case that has to do with improper withdrawal of DNA, the North Carolina Constitution provides greater privacy protection.

Representative Ross offered an amendment, (Attachment VI). The amendment would require that DNA records and samples be kept for the exclusive use of law enforcement for identification purposes and prohibits the use of the records and samples for other reasons such as medical or insurance purposes, or various other purposes.

Ms. Patricia Camp, American Civil Liberties Union, was recognized and spoke in support of the Ross amendment.

Representative Daughtry moved adoption of the amendment.

Upon vote of the committee, the amendment was adopted. Representative Miller voted no.

Representative Daughtry was recognized and spoke again regarding a good faith clause. Representative Alexander spoke in opposition to such an amendment.

Ms. Camp was recognized and spoke in opposition to a possible good faith amendment.

Representative Daughtry did not offer the amendment.

Representative Alexander moved that the Ross amendment be rolled into a new committee substitute, that the committee substitute be given a favorable report and that it be re-referred to the Committee on Appropriations. The motion carried, (Attachment VII). A copy of the adopted committee substitute is attached, (Attachment VIII).

The meeting was adjourned at 10:50 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY, APRIL 8, 2003

10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 27 – EXPAND DNA DATABANK/ALL FELONIES
REPRESENTATIVE RHODES

HOUSE BILL 79 – DNA REGISTRY
REPRESENTATIVE ALEXANDER

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cuble	City of Charlotte
James F. Alexander	physician
NELS ROSELAND	NCDOJ
Bill Wilson	NCATL
Greg McLeod	NCDOJ
Tracy Little	NCDOC
Beth Melcher	NAMI
Patricia Camp	ACLU
Amy Dobson	NC Statewatch.
CHRIS MEARS	Rep. JOE KISER
Jane Volland	GAL
Jana White	DOJ
Jerry Richardson	SBI
Laura DeVivo	NCGA

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat A. Yancey	ACLU
Mark V. Dodie	SBI
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf. Off Assn.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 79*

Short Title:	DNA Registry.	(Public)
Sponsors:	Representatives Alexander; Saunders and Pate.	
Referred to:	Judiciary I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample.**

(a) The following definitions apply in this section:

(1) 'DNA'. – As defined in G.S. 15A-266.2.

(2) 'DNA Record'. – As defined in G.S. 15A-266.2.

(3) 'DNA Sample'. – A sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to Article 13 of Chapter 15A of the General Statutes. The term includes a DNA blood sample as defined in G.S. 15A-266.2 and a DNA fluid or tissue sample as defined in G.S. 15A-266.2.

(4) 'SBI'. – State Bureau of Investigation.

(b) Any person who is arrested for committing any of the following offenses must provide his or her DNA sample pursuant to this section for DNA analysis and testing:

(1) Any Class A through E felony unless the offense is a violation of Chapter 90 or Chapter 143 of the General Statutes or is a larceny or embezzlement offense. For purposes of this subdivision, the term 'larceny or embezzlement offense' is a violation of G.S. 14-74, 14-100, 53-129, 58-2-162, or 105-236(9a)a., or Article 18 of Chapter 14 of the General Statutes.

(2) G.S. 14-32.1 Assaults on handicapped persons.

(3) G.S. 14-277.3 Stalking.

(c) It is the duty of the arresting law enforcement officer to obtain the arrested person's DNA sample and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. A qualified member of the health profession shall take the DNA sample. No unreasonable or unnecessary force shall be used to obtain the DNA sample.

(d) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the State Bureau of Investigation in the State DNA Databank pursuant to Article 13 of Chapter 15A of the General Statutes."

SECTION 2. 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 felonies or violent crimes against the person. 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 3. G.S. 15A-266.2 reads as rewritten:

"**§ 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.

~~(4)~~(2a) "DNA Blood 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.

(2b) "DNA Fluid or Tissue Sample" in this Article means a sample of saliva, hair, body tissue, or bodily fluid other than blood that is provided by a person arrested for certain felonies and submitted for DNA analysis as required by G.S. 15A-502A.

(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 sample of body tissue, blood, or other bodily fluid that is appropriate for DNA testing or analysis by the SBI Laboratory pursuant to this Article. The term includes both DNA blood samples and DNA fluid or tissue samples.

(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 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."

SECTION 4. 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, 2003, 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~~,December 1, 2003, 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~~ December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article ~~include:~~include all of the following:

(1) All felonies.

~~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.~~
(2) 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.~~
(3) G.S. 14-277.3 — Stalking.
~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 5. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~blood, other bodily fluid, or tissue samples.**

(a) The tests to be performed on each ~~blood~~ blood, other bodily fluid, or tissue 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.
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."

SECTION 6. The catch line of G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~blood, other bodily fluid, or tissue samples.**"

SECTION 7. G.S. 15A-266.8 reads as rewritten:

"**§ 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 of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S. 15A-502A 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~~ blood, other bodily fluid, and tissue 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."

SECTION 8. G.S. 15A-1382 reads as rewritten:

"**§ 15A-1382. Reports of disposition; ~~fingerprints.~~fingerprints and DNA samples.**

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. When a DNA sample is taken from the defendant pursuant to G.S. 15A-502A prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation.

(c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-502A prior to the disposition of the case, then a DNA sample shall be taken from

the felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation as provided by Article 13 of this Chapter."

SECTION 9. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile pursuant to G.S. 15A-502A."

SECTION 10. This act becomes effective December 1, 2003. Section 1 of this act applies to arrests made on or after December 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 79*
PROPOSED COMMITTEE SUBSTITUTE H79-CSSA-5 [v.6]

4/7/2003 1:56:31 PM

Short Title: DNA Registry. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES OR WHO IS FOUND NOT GUILTY BY REASON OF INSANITY OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, AND TO CLARIFY WHEN THAT SAMPLE IS TAKEN.

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 felonies or violent crimes against the person. 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, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes 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,~~December 1, 2003, of any of these crimes, or who is found not guilty of any of these crimes 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~~ December 1, 2003, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321

before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article ~~include:~~include all of the following:

(1) All felonies.

~~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.~~

(2) 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.~~

(3) G.S. 14-277.3 — Stalking.

~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 3. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

(a) 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.~~immediately following sentencing. The sentencing court shall order any person not sentenced to a term of confinement to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time and location at which the sample shall be taken, and the court shall enter that date, time and location into its order. A copy of the court order indicating the date, time and location the person is to appear to have a sample taken shall be given to

the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16.

(b) 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.

(c) The SBI shall provide to the sheriff the materials and supplies necessary to draw a DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn from a person not sentenced to a term of confinement shall be taken using the materials and supplies provided by the SBI."

SECTION 4. This act becomes effective December 1, 2003.

HOUSE BILL 79: DNA Registry

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Martha Alexander
Date:	April 8, 2003	**Summary by:**	Susan L. Sitze
Version:	H79-CSSA-5[v.6]		Committee Counsel

SUMMARY: ***The PCS for House Bill 79, as recommended by the subcommittee, expands the current DNA database to require that DNA samples be taken from anyone convicted of a felony or certain other criminal offenses and from anyone found not guilty by reason of insanity of a felony or certain other criminal offenses. The PCS also clarifies when a DNA sample will be taken.***

CURRENT LAW: The current law requires a DNA sample from anyone convicted of one of the felonies or misdemeanors specifically listed in the statute.

BILL ANALYSIS: **Section 1** of the PCS amends the policy statement for the DNA database to reflect the change to include all felonies.

Section 2 of the PCS amends G.S. 15A-266.4 to require that a DNA sample be taken from anyone convicted of any felony and anyone found not guilty by reason of insanity of any felony. The statute still retains the two misdemeanors currently in the law (assaults on handicapped persons and stalking).

Section 3 of the PCS amends G.S. 15A-266.6 to clarify the procedure for taking DNA samples from persons who are not sentenced to a term of confinement. These provisions require the person to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time and location at which the sample shall be taken, and the court shall enter that date, time and location into its order. A copy of the court order is provided to the sheriff and if the person does not appear at the appropriate time the sheriff shall inform the court. The court may issue an order to show cause and an order for arrest pursuant to the criminal contempt procedures.

This section also amends G.S. 15A-266.6 further to require the SBI to provide the testing kits to the sheriff and to also require the sheriff to use only the kits provided by the SBI.

Section 4 provides that this act is effective December 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 79*

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

H79-ASA-6 [v.3]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
H79-CSSA-5[v.6]

Representative Ross

moves to amend the bill on page 1, line 5-6
by rewriting those lines to read:
"FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, TO CLARIFY WHEN THAT SAMPLE IS TAKEN, AND TO RESTRICT THE RELEASE OF INFORMATION FROM THE DNA DATABASE."

And on page 3, lines 16-17
By inserting between the lines a new section to read:
"**SECTION 4.** G.S. 15A-266.12 reads as rewritten:
'**§ 15A-266.12. Confidentiality of ~~records.~~records and samples.**
(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. Except as provided in G.S. 15A-266.8, records or samples shall not be released, without the consent of the subject of the DNA record or sample, to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies, or services, private investigation services and may not be disclosed to any agency, authority, division, office, corporation, partnership, or any other private or public entity or person. Nothing in this section shall prohibit disclosure in response to a subpoena issued on behalf of the subject of the DNA record or sample.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 79*

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

H79-ASA-6 [v.3]

And on page 3, line 17
By deleting "**Section 4.**" And inserting "**Section 5.**"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2003 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. 79 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED OF A VIOLENT FELONY OR CERTAIN OTHER CRIMINAL OFFENSES AND TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 79*
PROPOSED COMMITTEE SUBSTITUTE H79-PCS60255-SA-5

Short Title: DNA Registry. (Public)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON CONVICTED OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES OR WHO IS FOUND NOT GUILTY BY REASON OF INSANITY OF ANY FELONY OR CERTAIN OTHER CRIMINAL OFFENSES, TO CLARIFY WHEN THAT SAMPLE IS TAKEN, AND TO RESTRICT THE RELEASE OF INFORMATION FROM THE DNA DATABASE.

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 felonies or violent crimes against the person. 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, 2003, a person who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes 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~~,December 1, 2003, of any of these crimes, or who is found not guilty of any of these crimes 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~~ December 1, 2003, or who was found not guilty of any of these crimes by reason

of insanity and committed to a mental health facility in accordance with G.S. 15A-1321 before December 1, 2003, shall have a DNA sample drawn before parole or release from the penal system.

(b) Crimes covered by this Article ~~include:~~include all of the following:

(1) All felonies.

~~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.~~

(2) 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.~~

(3) G.S. 14-277.3 — Stalking.

~~G.S. 14-87.1 — Common law robbery.~~
~~G.S. 14-58 — First degree arson.~~"

SECTION 3. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

(a) 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.~~immediately following sentencing. The sentencing court shall order any person not sentenced to a term of confinement to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time and location at which the sample shall be taken, and the court shall enter that date, time and location into its order. A copy of the court order indicating the date, time and

location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16.

(b) 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.

(c) The SBI shall provide to the sheriff the materials and supplies necessary to draw a DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn from a person not sentenced to a term of confinement shall be taken using the materials and supplies provided by the SBI."

SECTION 4. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of ~~records.~~records and samples.**

(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. Except as provided in G.S. 15A-266.8, records or samples shall not be released, without the consent of the subject of the DNA record or sample, to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies, or services, private investigation services, and may not be disclosed to any agency, authority, division, office, corporation, partnership, or any other private or public entity or person. Nothing in this section shall prohibit disclosure in response to a subpoena issued on behalf of the subject of the DNA record or sample."

SECTION 5. This act becomes effective December 1, 2003.

House Judiciary I Committee

April 10, 2003

Minutes

The House Judiciary I Committee met on Thursday, April 10, 2003 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, Harrell, Miller and Ross. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Vice Chair Ross presided over the discussion of House Bill 952, AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION ACT, (Attachment III). She recognized Chairman Hackney for an explanation of the bill. Representative Hackney reminded the committee that the Family Law Arbitration Act was enacted in 1991 that sets forth an infrastructure within which family law arbitration can occur, and can be made binding. He said that since the enactment of the bill, it has been determined that parties should be allowed to agree to confirm an arbitration award by contract rather than by court order. He said that this provision is very important in the family law context because things can be tied down in a contract where they are not changeable, whereas if the parties go to court, there may exist the ability to have modifications in the future. He said that the bill allows for this process to occur if both parties agree to it.

A copy of the bill analysis, prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV).

Due to lack of a quorum, no vote was taken on the bill at this time.

Chairman Hackney resumed the chair and recognized Representative Gibson for an explanation of House Bill 899, AN ACT TO PROVIDE THAT A PERSON SOLICITING A VIOLATION OF OR CONSPIRING TO VIOLATE THE LAW MAKING IT A MISDEMEANOR FOR EMPLOYING UNITS TO MAKE FALSE STATEMENTS TO THE EMPLOYMENT SECURITY COMMISSION IS GUILTY OF A FELONY, SO AS TO DETER THE PRACTICE OF STATE EMPLOYMENT TAX AVOIDANCE (SUTA DUMPING), (Attachment V). Representative Gibson said that suta dumping is the short term being used to describe a process where some companies take advantage of an increase in unemployment by creating shell companies that allow for a new and lower unemployment tax rate.

Ms. Sitze was recognized for further comment on the bill. She noted that the bill would create a Class H felony for soliciting or conspiring to take part in any of the acts

that constitute suta dumping. A copy of Ms. Sitze's bill analysis is attached, (Attachment VI).

Mr. David Clegg, Deputy Chairman, Employment Security Commission, said that suta dumping is the manipulation of a tax break for the purpose of moving employees through limited liability corporations in order to get the beginning unemployment insurance rate of 1.2%. He said that the highest unemployment insurance rate is 5.7%. Mr. Clegg noted that this practice saves huge amounts of money for the employers, but results in under funding the Unemployment Insurance Trust Fund for valid claims that might be filed by those same employees. He said that the amount of money involved is quite substantial. He said that ESC has become aware of this situation both through the United States Department of Labor's alert, and also through their own continuous investigation and that they are currently investigating about eight companies who are engaging in this process.

Representative Gibson asked if this problem existed prior to the escalation of unemployment rates in the state. Mr. Clegg replied that this was not an issue in the past because employers were experiencing a low unemployment insurance rate. However with layoffs and claims, the employers' rates have gone up dramatically.

Chairman Hackney reminded the committee that a quorum was still not present and asked if any member objected to continuation of discussion. No objection was voiced.

Representative Miller asked who would be arrested under the provisions of the bill.

Mr. Clegg replied that those entities that are encouraging employers to engage in the activity would be arrested. He added that administrative fines would be levied against employers along with a misdemeanor charge.

Mr. Sam Johnson, representing the North Carolina Association of Certified Public Accountants, said that he thinks this is a proper subject for legislative review.

The committee turned its attention to House Bill 950, AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT, (Attachment VII). Chairman Hackney introduced the bill. He said that no action would be taken on this bill, but that several interested parties were in the audience and extended an opportunity for them to be heard.

Mr. Don Hargrove, Department of Juvenile Justice and Delinquency Prevention, was recognized. He stated that the department understands the purpose of the bill and is working with the committee counsel on additional language.

Ms. Jo McCants, Administrative Office of the Courts, speaking on behalf of some of the district court judges, said that she had spoken to some judges who are uncomfortable with the new language that is being developed and were more comfortable with the original bill.

Mr. Martin Pharr, Department of Juvenile Justice and Delinquency Prevention, stated that in order to rehabilitate or habilitate a juvenile, the department sometimes needs to conduct a more extensive assessment. He said that in order to accomplish this they must sometimes work with the family of the juvenile and the juvenile in a home setting.

The committee adjourned at 10:55 a. m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY, APRIL 10, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 899 – SOLICITING SUTA DUMPING A FELONY
REPRESENTATIVE GIBSON

HOUSE BILL 950 – JUVENILE COMMITMENT TO DJJDP
REPRESENTATIVE HACKNEY

HOUSE BILL 952 – CLARIFYING CHANGE/FAMILY LAW
REPRESENTATIVE HACKNEY

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 10, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeb Alley	Alley Associates
Jim Ahler	NC. Assn. of CPAs
Sam Johnson	Atty
Tommy Hannah	Lobbyist
J. McCants	AOC
Ernestine Durham	Exe Intern. Rep. Gibson
David Clegg	ESC
Lockhart Taylor	ESC
Jane Linsley	NCCAI
Ellen Adelman	
Ron Aycock	County Com. Assoc

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 10, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrice Roesler	NCACC
Ken Melton	Alley Associates
Paula A. Wolf	Covenant w/ NC's Children
Cathy Dick	DJJDP
Donn Hargrove	" "
Martin Phaneuf	" "

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 952

Short Title:	Clarifying Change/Family Law Arbitration Act.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-53 reads as rewritten:

"**§ 50-53. Confirmation of award.**

~~Upon~~ Unless the parties agree otherwise, upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings."

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

HOUSE BILL 952:
Clarifying Change/Family Law Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 10, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 952 would allow parties who participate in family law arbitration to agree not to have the final award confirmed by the court.

CURRENT LAW: The Family Law Arbitration Act requires the court to confirm, upon either party's application, the final award of the arbitrator. The effect of this is to make the award a court order.

BILL ANALYSIS: House Bill 952 would amend G.S. 50-53 to allow the parties involved in a family law arbitration to agree that they do not wish to have the arbitrator's award confirmed by the court. This would allow parties to agree that they wish the award to remain a contract and therefore capable of being modified as a contract and enforceable under contract law, rather than a court order.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 899*

Short Title:	Soliciting SUTA Dumping a Felony.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Judiciary I.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SOLICITING A VIOLATION OF OR CONSPIRING TO VIOLATE THE LAW MAKING IT A MISDEMEANOR FOR EMPLOYING UNITS TO MAKE FALSE STATEMENTS TO THE EMPLOYMENT SECURITY COMMISSION IS GUILTY OF A FELONY, SO AS TO DETER THE PRACTICE OF STATE EMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-18(b) reads as rewritten:

"(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Notwithstanding G.S. 14-2.6(b), any person who solicits any person to violate this subsection is guilty of a Class H felony. Any person, other than the employing unit or an officer or employee of that unit, who conspires to violate this subsection, is guilty of a Class H felony."

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

HOUSE BILL 899:
Soliciting SUTA Dumping a Felony

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Pryor Gibson
Date:	April 10, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 899 provides that a person soliciting a violation of or conspiring to violate the law making it a misdemeanor for employing units to make false statements to the Employment Security Commission is guilty of a felony.***

BILL ANALYSIS: House Bill 899 would create a Class H felony for either soliciting or conspiring to violate the law prohibiting employing units from making false statements or to knowingly fail to disclose a material fact to the Employment Security Commission (ESC) to prevent or reduce the payment of unemployment benefits to any individual, or to avoid or reduce any contributions or payments required from an employing unit to the unemployment insurance program.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 950

Short Title: Juvenile Commitment to DJJDP. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2513(e) reads as rewritten:

"(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution ~~or other program~~ of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile. The Department may assign a juvenile committed for delinquency to another program of the Department only if the court, upon motion of the Department, finds that the program is appropriate to the needs of the juvenile and orders the juvenile assigned to that program."

SECTION 2. This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

House Judiciary I Committee

April 22, 2003
10:00 a.m. meeting

Minutes

The House Judiciary I Committee met on Tuesday, April 22, 2003 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 Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

The first bill under consideration by the committee was House Bill 952, AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION ACT, (Attachment III). The bill, sponsored by Representative Hackney, was explained during the April 10 meeting of the committee. A vote was not taken at that time due to a lack of quorum.

A copy of the bill analysis, prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment IV).

Representative Daughtry moved for a favorable report. The motion carried, (Attachment V).

Representative Alexander was recognized for an explanation of House Bill 562, AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS, (Attachment VI). The bill was explained during the April 1, 2003 meeting of the committee. A copy of the bill analysis is attached, (Attachment VII). Chairman Hackney stated that his intern, Mr. Rob McRight had researched similar systems that are in place across the country and found that they are working satisfactorily and that there have been no legal challenges.

Representative Capps offered a technical amendment, (Attachment VIII), to change the new statute number. The amendment was adopted.

Representative Capps moved a favorable report for a committee substitute incorporating the technical amendment.

Representative Daughtry spoke in opposition to the motion.

Representative Ross asked what happens to the fees for violations and how it plays in with the state constitution on having fines and forfeitures go to the schools.

Ms. Leanne Winner, North Carolina School Boards Association, stated that the bill, as drafted, fits the constitutional requirement because it is a city ordinance as opposed to a state civil penalty. She said that the question for this committee would be to determine the proper entity to receive the benefits of that fine. She noted that as drafted, the city receives the benefits. She said that the committee would have to decide if it wants in line with the intent of the constitution. She further noted that a concern of the city is how to pay for the cameras and noted that this could be corrected by putting in an additional court fee to cover the purchase and operation of the cameras.

Representative Ross asked if there was anything that could be done to require that some of the money go to the schools.

Ms. Sitze stated that in the red light camera program for the City of Raleigh, the proceeds were directed to the schools at the request of the municipalities that were going to use the system established by the bill. She said that this is not a clear-cut issue and that differing interpretations exist on how this plays out. She said that cities may enact ordinances and choose to have only civil penalties. She said that there is another statute that says that violation of local ordinance is either a misdemeanor or an infraction depending upon the type of ordinance.

Representative Ross asked if the City of Charlotte would be willing to give a portion of the proceeds from the tickets to the schools and support an amendment to this bill that would require this.

Mr. Boyd Cauble, City of Charlotte, said that the city had discussed this issue with the local school board's lobbyist who indicated that they had no problem with the bill, and with the city keeping the funds. He said that in their Safe Light program they have directed all surplus funds to safety programs, most of which address school board problems such as crossing guards, peak school traffic interchanges, etc. He further noted that during discussion regarding the Safe Light program, the city had suggested to the local school board that they might wish to file a friendly law suit to see what the courts might say with regard to the distribution of the proceeds. He said that their response was that they did not file lawsuits that they thought they might lose. He stated that the City of Charlotte would prefer to proceed the way the bill is currently written because not only is there an issue of disagreement with those who suggest that the constitution requires that money go to school boards on civil penalties, but also because of an operational issue. He said that the city is not sure how much the program will cost, and what the

success rate will be. He noted that the more successful the program, the less money will be generated, and they then may face the prospect of operating at a deficit.

Representative Miller stated that the city should be able to decide how to handle the funds.

Representative Ross stated that if this becomes a state-wide operation and yet another way that school systems lose money that it otherwise gets, then the General Assembly would need to make up that appropriation.

Representative Sexton spoke in opposition to the bill.

The motion for a favorable report for a committee substitute was before the committee. The motion failed by a vote of 4-5.

Representative Insko was recognized to explain House Bill 826, AN ACT TO AMEND THE CONFIDENTIALITY PROVISIONS OF CHAPTER 122C OF THE GENERAL STATUTES TO PERMIT IMPLEMENTATION OF MENTAL HEALTH SYSTEM REFORM, (Attachment IX). She said that the bill allows mental health reform to go forward smoothly. She said that there are 39 area mental health programs throughout the state and historically those programs have provided service and managed the system at the same time. She said that under reform, capacity is being increased at the local level so that more patients may be de-institutionalized and be served closer to their homes. She said that private sector providers are being engaged, so instead of a patient being served by one agency where information is freely shared among the people who work in that agency, files must now be transferred from one agency to another. The bill would allow records to be shared among the agencies that are providing services to the patient.

Ms. Erika Churchill, Committee Counsel, was recognized for a section-by-section explanation of the bill. The analysis is included in the minutes, (Attachment X).

Mr. Don Willis, Division of Mental Health, spoke in support of the bill.

Chairman Hackney asked why this information cannot be shared under current law.

Representative Insko stated that it was her understanding that confidentiality would preclude agency -sharing information. Ms. Churchill added that privacy laws regarding the provision of mental health services to a client allows the client access to the information and control as to where the information goes. She said that current statute specifically states that information can be shared when failure to share the information would be detrimental to the care, treatment and habilitation of the client. She said that this language would be eliminated by this bill and would delete that limitation on sharing.

Representative Ross asked if there is a penalty if the information is shared inappropriately. Ms. Churchill replied that this is already covered in the statute. She said that the penalty is a Class 3 misdemeanor punishable only by a fine not to exceed $500.

Representative Daughtry moved for a favorable report of House Bill 826. Upon vote of the members, the motion carried, (Attachment XI).

Representative Ross was recognized for an explanation of House Bill 1048, AN ACT TO MAKE REVISIONS UNDER THE JUVENILE CODE REGARDING GUARDIANS AD LITEM, (Attachment XII). A proposed committee substitute was distributed to the committee members, (Attachment XIII), and Representative Ross moved its adoption for the purpose of discussion. The motion carried. Representative Ross said that the bill was suggested by the Court Improvement Project, a group of several of people in the courts system who study our juvenile code to determine how it is working.

Ms. Churchill was recognized for further comment on the bill. She explained each section of the bill, and her analysis is attached to the minutes, (Attachment XIV). Committee discussion followed.

Ms. Kella Hatcher, Administrative Office of the Courts, commented briefly on the bill.

No action was taken on the bill

Vice-Chair Ross presided over the discussion of House Bill 999 and 1040, AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE, (Attachments XV and XVI). Representatives Hackney, Sauls and Gibson introduced the identical bills as primary sponsors. Representative Hackney said that a constituent brought the issue to his attention noting that some large national companies were attempting to prevent, after market, the reuse, remanufacturing and refilling of toner or inkjet cartridges. He said that the bill puts the state on record that the public policy of North Carolina is that agreements or contracts that say that you cannot reuse the cartridges are void and unenforceable. A copy of the bill analysis is attached to the minutes, (Attachment XVII).

Representative Sauls commented briefly on the environmental and economic impact of the bill, and requested support of the committee.

Mr. Skip London, General Counsel, Static Control, Sanford, North Carolina, spoke in support of the bill.

Mr. Dean Malson, Laser Consultants, Inc., Greensboro, spoke in support of the bill.

Mr. Sandy Sands, representing Lexmark Corporation, spoke in opposition to the bill.

No action was taken and the meeting adjourned at 10:55 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
TUESDAY, APRIL 22, 2003
10:00 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 562 – CHARLOTTE PHOTO SPEED MEASURING SYSTEMS
REPRESENTATIVE ALEXANDER

HOUSE BILL 826 – AMEND MH CONFIDENTIALITY STATUTES
REPRESENTATIVE INSKO

HOUSE BILL 952 – CLARIFYING CHANGE/FAMILY LAW
REPRESENTATIVE HACKNEY

HOUSE BILL 999 – TONER/INKJET CARTRIDGES
REPRESENTATIVE HACKNEY

HOUSE BILL 1040 – TONER/INKJET CARTRIDGES
REPRESENTATIVE SAULS

HOUSE BILL 1048 – REVISE TO JUVENILE CODE/GUARDIANS AD LITEM
REPRESENTATIVE ROSS

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Pinsky	AAA Carolinas
Dean Mobom	Laser Consultants, Inc.
Joseph Myers	DJJDP-CPSV
John Smith	NCDHHS
David Sarda	WCSR
Peter Brown	Lexmark
Mason Mansbach	Poyner + Spruill
Kim G. Connell	WCSR
DAVID BARNES	P+S
Skip London	Static Control, Sanford NC
Charles Taylor	Static Control Components

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Hans	HMW
Mack Paul	HMW
[signature]	NWA
Don HOBART	NC Dept of Commerce
Rob Schofield	NC Justice Center
Sharif Durhams	Charlotte Observer
Laura DeVivo	NCGA
Chad Essick	Edmisten & Webb Law firm
Barbara Cansler	HMW

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe [illegible]	McGlen Consulting
Elizabeth Ouzts	NCPIRG
Capt. Dave Haggist	Charlotte-Meck. Police
Boyd Cauble	City of Charlotte – Mgr's Office
CHARLIE BROWN	CHARLOTTE MECKLENBURG POLICE
LANA DIAL	NC-AOC, Raleigh
Kella Hatcher	AOC- Guardian ad Litem
Jane Voland	GAL / AOC
Bill [illegible]	Lawmark
Don Willis	DMH DD SAS
Leanne Winner	NCSBA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 952

Short Title:	Clarifying Change/Family Law Arbitration Act.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-53 reads as rewritten:

"**§ 50-53. Confirmation of award.**

~~Upon~~ Unless the parties agree otherwise, upon a party's application, the court shall confirm an award, unless within time limits imposed under G.S. 50-54 through G.S. 50-56 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in G.S. 50-54 through G.S. 50-56. The court may award costs, as provided in G.S. 50-51(f), of the application and subsequent proceedings."

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

HOUSE BILL 952:
Clarifying Change/Family Law Arbitration Act

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 10, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

*SUMMARY: **House Bill 952 would allow parties who participate in family law arbitration to agree not to have the final award confirmed by the court.***

CURRENT LAW: The Family Law Arbitration Act requires the court to confirm, upon either party's application, the final award of the arbitrator. The effect of this is to make the award a court order.

BILL ANALYSIS: House Bill 952 would amend G.S. 50-53 to allow the parties involved in a family law arbitration to agree that they do not wish to have the arbitrator's award confirmed by the court. This would allow parties to agree that they wish the award to remain a contract and therefore capable of being modified as a contract and enforceable under contract law, rather than a court order.

2003 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. 952 A BILL TO BE ENTITLED AN ACT TO MAKE A CLARIFYING CHANGE TO THE LAWS RELATING TO THE CONFIRMATION OF AN ARBITRATION AWARD UNDER THE FAMILY LAW ARBITRATION 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 the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 562

Short Title:	Charlotte Photo Speed Measuring Systems.	(Public)
Sponsors:	Representatives Alexander, Rhodes (Primary Sponsors); Cunningham and Earle.	
Referred to:	Judiciary I.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.2 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.2(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

HOUSE BILL 562:
Charlotte Photo Speed Measuring Systems

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Martha Alexander
Date:	April 1, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 562 would authorize the City of Charlotte to use photographic speed-measuring systems during a three year pilot program in designated corridors. The bill would allow the City to establish civil penalties for speed limit and school zone speed limit violations.***

BILL ANALYSIS: **Section 1** of the bill creates a new G.S. 160A-300.2 which authorizes municipalities to adopt ordinances for the civil enforcement of speed limit and school zone speed limit violations through the use of photographic speed measuring systems. A photographic speed measuring system is a "speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction".

The speed measuring systems would be calibrated pursuant to standards adopted by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety and would be monitored by a sworn law enforcement officer at all times that the system is actively in use. Any system installed or in use shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of the system.

The owner of a vehicle photographed is responsible for the violation unless the owner furnishes evidence within 21 days of notification of the violation that, at the time of the offense, the vehicle was under the care, custody or control of another person or that the vehicle had been stolen or was otherwise in the care, custody or control of a person without permission to use the vehicle. The violation is noncriminal and a civil penalty of $50 is assessed. In addition, no license or insurance points may be assigned to the owner or the driver of the vehicle.

The citation will be mailed to the owner. Personal service is not required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to an additional penalty not to exceed $50.00.

The municipality must institute a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed. An administrative hearing decision shall be subject tot review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed measuring systems.

Section 2 of the bill sets for the criteria under which the results of the use of a photographic speed measuring system are admissible as evidence in a nonjudicial administrative hearing held pursuant to Section 1 of this bill for the purpose of establishing the speed of the vehicle.

In order for the results of a photographic speed measuring system to be admissible all of the following criteria must be met:

- The photographic speed measuring system was approved by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety.
- The photographic speed measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.
- At the time the results were obtained, the photographic speed measuring system was being monitored by a sworn law enforcement officer.

Section 3 of the bill amends G.S. 17C-6(a) to authorize the North Carolina Criminal Justice Education and Training Standards Commission, in conjunction with the Secretary of Crime Control and Public Safety, to approve use of specific models and types of photographic speed measuring systems and establish the standards for calibration and testing for accuracy of each approved system.

Section 4 restricts the application Section 1 of this bill to the City of Charlotte and the use of the photographic speed measuring system to 14 specifically identified corridors within the City of Charlotte.

This act is effective July 1, 2003 and expires June 30, 2006.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 562

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

H562-ASA-9 [v.1]

Date _____,2003

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

Representative Capps ~~Alexander~~

moves to amend the bill on page 1, line 14
by deleting "160A-300.2" and inserting "160A-300.4";

and on page 3, line 8
by deleting "160A-300.2" and inserting "160A-300.4";

and on page 3, line 9
by deleting "160A-300.2(e)(4)" and inserting "160A-300.4(e)(4)";

and on page 3, line 33
by deleting "160A-300.2(e)(4)" and inserting "160A-300.4(e)(4)";

and on page 3, line 35
by deleting "160A-300.2(e)(4)" and inserting "160A-300.4(e)(4)";

and on page 4, line 3
by deleting "160A-300.2(a)" and inserting "160A-300.4(a)";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 826*

Short Title:	Amend MH Confidentiality Statutes.	(Public)
Sponsors:	Representative Insko.	
Referred to:	Health, if favorable, Judiciary I.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONFIDENTIALITY PROVISIONS OF CHAPTER 122C OF THE GENERAL STATUTES TO PERMIT IMPLEMENTATION OF MENTAL HEALTH SYSTEM REFORM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 122C-3 is amended by inserting the following term in alphabetical order to read:

"**§ 122C-3. Definitions.**

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Applicant' means an individual who contacts an area facility for services.

..."

SECTION 1.(b) G.S. 122C-3(14) reads as rewritten:

"**§ 122C-3. Definitions.**

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

...

(14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An "area facility", which is a facility that is operated by or under contract with the area ~~authority.~~authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. ~~A facility that is providing services under contract with the area~~

~~authority is an area facility for purposes of the contracted services only.~~ Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;

f. A "State facility", which is a facility that is operated by the Secretary;

g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers."

SECTION 2. G.S. 122C-54(b) reads as rewritten:

"**§ 122C-54. Exceptions; abuse reports and court proceedings.**

...

(b) If an individual is a defendant in a criminal case and a mental examination of the defendant has been ordered by the ~~court,~~ court as provided in G.S. 15A-1002, the facility ~~may~~ shall send the results or the report of the mental examination to the clerk of court, to the district attorney or prosecuting officer, and to the attorney of record for the defendant as provided in G.S. 15A-1002(d)."

SECTION 3. G.S. 122C-55 reads as rewritten:

"**§ 122C-55. Exceptions; care and treatment.**

(a) Any area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill when necessary to coordinate appropriate and effective care, treatment or habilitation of ~~the client and when failure to share this information would be detrimental to the care, treatment or habilitation of the client.~~ the client. For the purposes of this subsection, coordinate means the provision, coordination, or management of mental health, developmental disabilities, and substance abuse services and related services by one or more facilities and includes the referral of a client from one facility to another. ~~Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.~~

(a1) Any State or area facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill when the responsible professional or the Secretary determines that disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of ~~the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client.~~client.

(a2) Any area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with any other area facility or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill when necessary to conduct payment activities relating to an individual served by the facility. Payment activities are activities undertaken by a facility to obtain or provide reimbursement for the provision of services and may include, but are not limited to, determinations of eligibility or coverage, coordination of benefits, determinations of cost sharing amounts, claims management, claims processing, claims adjudication, claims appeals, billing and collection activities, medical necessity reviews, utilization management and review, precertification and preauthorization of services, concurrent and retrospective review of services, and appeals related to utilization management and review.

(a3) Whenever there is reason to believe that a client is eligible for benefits through a Department program, any State or area facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area facility or State facility or the psychiatric services of the University of North Carolina Hospitals at Chapel Hill. Disclosure is limited to that information necessary to establish initial

eligibility for benefits, determine continued eligibility over time, and obtain reimbursement for the costs of services provided to the client.

(a4) An area authority or county program may share confidential information regarding any client with any area facility, and any area facility may share confidential information regarding any client of that facility with the area authority or county program, when the area authority or county program determines the disclosure is necessary to develop, manage, monitor, or evaluate the area authority's or county programs network of qualified providers as provided in G.S. 122C-115.2(b)(1)b., G.S. 122C-141(a), the State Plan, and rules of the Secretary. For the purposes of this subsection, the purposes or activities for which confidential information may be disclosed include, but are not limited to, quality assessment and improvement activities, provider accreditation and staff credentialing, developing contracts and negotiating rates, investigating and responding to client grievances and complaints, evaluating practitioner and provider performance, auditing functions, on-site monitoring, conducting consumer satisfaction studies and collecting and analyzing performance data.

(a5) Any area facility may share confidential information with any other area facility regarding an applicant when necessary to determine whether the applicant is eligible for area facility services.

(b) A facility, physician, or other individual responsible for evaluation, management, supervision, or treatment of respondents examined or committed for outpatient treatment under the provisions of Article 5 of this Chapter may request, receive, and disclose confidential information to the extent necessary to enable them to fulfill their responsibilities.

(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, developmental disabilities, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, developmental disabilities, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure.

(d) A responsible professional may disclose confidential information when in his opinion there is an imminent danger to the health or safety of the client or another individual or there is a likelihood of the commission of a felony or violent misdemeanor.

(e) A responsible professional may exchange confidential information with a physician or other health care provider who is providing emergency medical services to

a client. Disclosure of the information is limited to that necessary to meet the emergency as determined by the responsible professional.

(e1) A State facility may furnish client identifying information to the Department for the purpose of maintaining an index of clients served in State facilities which may be used by State facilities only if that information is necessary for the appropriate and effective evaluation, care and treatment of the client.

(e2) A responsible professional may disclose an advance instruction for mental health treatment or confidential information from an advance instruction to a physician, psychologist, or other qualified professional when the responsible professional determines that disclosure is necessary to give effect to or provide treatment in accordance with the advance instruction.

(f) A facility may disclose confidential information to a provider of support services whenever the facility has entered into a written agreement with a person to provide support services and the agreement includes a provision in which the provider of support services acknowledges that in receiving, storing, processing, or otherwise dealing with any confidential information, he will safeguard and not further disclose the information.

(g) Whenever there is reason to believe that the client is eligible for financial benefits through a governmental agency, a facility may disclose confidential information to ~~State~~ State, local, or federal government agencies. ~~Disclosure~~ Except as provided in G.S. 122C-55(a3), disclosure is limited to that confidential information necessary to establish financial benefits for a client. After establishment of these benefits, the consent of the client or his legally responsible person is required for further release of confidential information under this subsection.

(h) Within a facility, employees, students, consultants or volunteers involved in the care, treatment, or habilitation of a client may exchange confidential information as needed for the purpose of carrying out their responsibility in serving the client.

(i) Upon specific request, a responsible professional may release confidential information to a physician or psychologist who referred the client to the facility.

(j) Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin or other family member or the designee with notification of the client's diagnosis, the prognosis, the medications prescribed, the dosage of the medications prescribed, the side effects of the medications prescribed, if any, and the progress of the client, provided that the client or his legally responsible person has consented in writing, or the client has consented orally in the presence of a witness selected by the client, prior to the release of this information. Both the client's or the legally responsible person's consent and the release of this information shall be documented in the client's medical record. This consent shall be valid for a specified length of time only and is subject to revocation by the consenting individual.

(k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206, upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally

responsible person, the responsible professional shall provide the next of kin, or family member, or the designee, notification of the client's admission to the facility, transfer to another facility, decision to leave the facility against medical advice, discharge from the facility, and referrals and appointment information for treatment after discharge, after notification to the client that this information has been requested.

(l) In response to a written request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client, for additional information not provided for in subsections (j) and (k) of this section, and when such written request identifies the intended use for this information, the responsible professional shall, in a timely manner:

(1) Provide the information requested based upon the responsible professional's determination that providing this information will be to the client's therapeutic benefit, and provided that the client or his legally responsible person has consented in writing to the release of the information requested; or

(2) Refuse to provide the information requested based upon the responsible professional's determination that providing this information will be detrimental to the therapeutic relationship between client and professional; or

(3) Refuse to provide the information requested based upon the responsible professional's determination that the next of kin or family member or designee does not have a legitimate need for the information requested.

(m) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules specifically to define the legitimate role referred to in subsections (j), (k), and (l) of this section."

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

ATTACHMENT X

HOUSE BILL 826:
Amend MH Confidentiality Statutes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Insko
Date:	April 22, 2003	**Summary by:**	R. Erika Churchill*
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 826 would amend the confidentiality provisions of Chapter 122C of the General Statutes and related definitions. The act would become effective when it becomes law.

CURRENT LAW AND BILL ANALYSIS:

Changes to Definitions.

Section 1.(a): Adds a definition of "applicant," defining applicant as an individual who contacts an area facility for services. A change to the mental health confidentiality provisions in Section 3 (page 4, lines 17-19) would permit area facilities to share confidential information with any other area facilities regarding an "applicant" when necessary to determine whether the applicant is eligible for area facility services. An "area facility" is a "facility" that is operated by or under contact with an area authority or county program. A "facility" is any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

Section 1.(b): Amends the definition of "area facility" to specify that if a facility by written agreement agrees to provide services to one or more clients of an area authority or county program, it is an "area facility". The bill would also delete the proviso that these facilities are area facilities for purposes of the contracted services only, thereby making all facilities that contract with area authorities or county programs to provide mental health services "area facilities".

Changes to Confidentiality Provisions. Confidential information acquired in attending or treating mental health clients is not a public record, and cannot be disclosed except as specifically provided by statute.

Section 2: G.S. 122C-54 permits facilities to disclose confidential client information under certain circumstances in court proceedings. Current law permits facilities to send the results of a court-ordered mental examination to the clerk of court, to the district attorney, and to the defendant's attorney. This section would require a facility to send the results of a mental examination ordered by the court to determine whether a defendant is competent to stand trial to the clerk, district attorney, and the defendant's attorney.

Section 3: G.S. 122C-55 permits facilities and hospitals to disclose confidential client information under certain circumstances:

- Area or State facilities and the psychiatric service of UNC Hospitals may share confidential information among themselves, and between themselves and the Secretary of DHHS, when necessary to coordinate treatment for the client and when failure to do so would be detrimental to the client's care, and the client's consent is not required. The bill would remove the limitation that permitted disclosure only when failure to do so would be detrimental to the client's care. For purposes of disclosure among facilities and UNC Hospitals, "coordination" would include client referral from one facility to another.
- New language on page 3, lines 26-37 would permit area or State facilities or the psychiatric service of UNC Hospitals to share confidential information regarding a client with each other

when necessary to conduct payment activities, i.e. activities undertaken by a facility to obtain or provide reimbursement for providing services.

- New language on page 3, lines 38-44 and page 4, lines 1-2, would permit area or State facilities or the psychiatric service of UNC Hospitals and the Secretary to share confidential information regarding a client with each other whenever there is a reason to believe that a client is eligible for benefits through a Department program. Disclosure would be limited to the information necessary to make initial and continuing eligibility determinations and to obtain reimbursement.
- New language on page 4, lines 3-16, would permit area authorities and county programs to share confidential information regarding a client when necessary to develop, manage, monitor, or evaluate the area authority's or county program's network of qualified providers.
- Currently, a facility may disclose confidential client information to State or federal agencies whenever there is a reason to believe the client is eligible for financial benefits through a governmental agency. The bill would permit facilities to disclose information to local agencies under these circumstances.

EFFECTIVE DATE. The bill would be effective when it becomes law.

BACKGROUND: As enacted by the 2001 General Assembly, S.L. 2001-437 (HB 381), amended the mental health statutes to provide counties an alternative to establishing area authorities to ensure the provision of public mental health, developmentally disabled and substance abuse (MH/DD/SA) services to consumers. Counties were authorized to withdraw from existing area authorities and to ensure the delivery of public MH/DD/SA services through a single county program or jointly with one or more counties through a joint agency established pursuant to the terms of an interlocal agreement.
Other elements of the act include:

- Enhanced accountability and cooperation between boards of county commissioners, area authorities, and the Department of Health and Human Services(DHHS).
- Requirements to develop a 'business plan' to guide the management and delivery of public services at the local level and State level.
- Requirements for the universal availability of core services (including 'front-end' services such as screening, assessment, and emergency triage, and 'indirect services' such as prevention, education, and consultation at the community level) within available State and local resources.
- Enhanced powers and duties of local and State governing structures relating to quality assurance and accountability at the State and local levels.
- Establishment of a consumer advocacy program to operate at the State and local levels and to coordinate their functions with local consumer groups.
- Directives to DHHS to implement a certification process and to follow specific procedures to prepare for the reforms provided for in the legislation.
- Directives to the Secretary of DHHS to establish schedules for implementing a phased-in plan to eliminate disparities in the allocation of State funding across county programs and area authorities.
- A requirement that prior to requesting approval to close a State facility, the Secretary shall notify the Joint Legislative Commission on Governmental Operations and the Joint Legislative Committee on MH/DD/SAS and the members of the General Assembly who represent catchment areas affected by the closure and shall present a plan for the closure that addresses how patients will be cared for after the closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining facilities.
- New limitations on the authority of the Secretary to close a State facility.

**Dianna Jessup and Amy Compeau substantially contributed to this summary.*

2003 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. 826 A BILL TO BE ENTITLED AN ACT TO AMEND THE CONFIDENTIALITY PROVISIONS OF CHAPTER 122C OF THE GENERAL STATUTES TO PERMIT IMPLEMENTATION OF MENTAL HEALTH SYSTEM REFORM.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1048

Short Title:	Revise to Juvenile Code/Guardians ad Litem.	(Public)
Sponsors:	Representatives Ross; Glazier, Alexander, and Insko.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS UNDER THE JUVENILE CODE REGARDING GUARDIANS AD LITEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"**§ 7B-808. Predisposition ~~investigation and~~ report.**

(a) In all cases in which a petition is filed, the director of the department of social services shall prepare a predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503 and a placement and treatment plan the director deems appropriate to meet the juvenile's needs. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing without receiving a predisposition report.

(b) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure would not be in the best interest of the child. However, in no event shall this provision prevent a party who is entitled by law to receive confidential information from receiving the information.

(c) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. ~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may~~

~~order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.~~"

SECTION 3. G.S. 7B-1111(a)(6) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other ~~similar~~ cause or ~~condition.~~condition that renders the parent unable or unavailable to parent the child and the parent has no appropriate alternative child care arrangement.

...."

SECTION 4. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to ~~G.S. 7B-1111(6); or~~G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for

adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

SECTION 5. G.S. 7B-100 is amended by adding the following new subdivision to read:

"This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

...

(5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time."

SECTION 6. G.S. 7B-406(a) reads as rewritten:

"(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring ~~them~~ that person to appear for a hearing at the time and place stated in the summons. When the petition alleges abuse or neglect, the clerk shall provide a copy of the petition and notice of hearing to the local guardian ad litem office. A copy of the petition shall be attached to each summons. Service of the summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor."

SECTION 7. G.S. 7B-1001 reads as rewritten:

"**§ 7B-1001. Right to appeal.**

Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in writing within 10 days after entry of the ~~order.~~order and, in the case of appeals taken by the respondent parent, signed by both the respondent parent and the attorney for the respondent parent. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

(1) Any order finding absence of jurisdiction;

(2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;

(3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or

(4) Any order modifying custodial rights."

SECTION 8. G.S. 7B-1113 reads as rewritten:

"**§ 7B-1113. Appeals; modification of order after affirmation.**

Any juvenile, juvenile acting through the juvenile's guardian ad litem if one is appointed, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in writing within 10 days after entry of the order. In the case of appeals taken by the respondent parent, the notice of appeal

must be signed by both the respondent parent and the attorney for the respondent parent. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

SECTION 9. G.S. 7B-1108(b) reads as rewritten:

"(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S. 7B-603.~~G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the Guardian ad Litem program be appointed to any case unless the child is or has been the subject of a petition for abuse, neglect, or dependency. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading."

SECTION 10. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections ~~(b), (c),~~

~~and (d)~~(b) and (c) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

SECTION 11. G.S. 7B-907 is amended by adding a new subsection to read:

"(f) If the court determines that the child shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the child understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the child."

SECTION 12. G.S. 14-16.10(1) reads as rewritten:

"The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in ~~G.S. 7B-1501(18a).~~G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts."

SECTION 13. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1048
PROPOSED COMMITTEE SUBSTITUTE H1048-CSST-13 [v.5]

4/22/2003 9:05:40 AM

Short Title: Revise to Juvenile Code. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"**§ 7B-808. Predisposition ~~investigation and~~ report.**

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.~~

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503, a placement plan and a treatment plan the director deems appropriate to meet the juvenile's needs.

(c) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure

would not be in the best interest of the juvenile. Such local rules or administrative order may not:

(1) Prohibit a party entitled by law to receive confidential information from receiving that information.

(2) Allow disclosure of any confidential source protected by statute."

SECTION 3. G.S. 7B-1111(a)(6) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other ~~similar~~ cause or ~~condition.~~ condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

...."

SECTION 4. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to ~~G.S. 7B-1111(6); or~~ G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or

50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

SECTION 5. G.S. 7B-100 is amended by adding the following new subdivision to read:

"This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

...

(5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time."

SECTION 6. Article 4 of Chapter 7Bof the General Statutes is amended by adding a new section G.S. 7B-408 to read:

"**§ 7B-408. Copy of petition and notices to guardian ad litem.**

Immediately after a petition has been filed alleging that a juvenile is abused or neglected, the clerk shall provide a copy of the petition and any notices of hearings to the local guardian ad litem office."

SECTION 7. G.S. 7B-1001 reads as rewritten:

"**§ 7B-1001. Right to appeal.**

Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in writing within 10 days after entry of the order. In the case of appeals taken by the respondent parent, guardian, or custodian, the notice of appeal must be signed by both the respondent parent, guardian, or custodian and the attorney for that party. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

(1) Any order finding absence of jurisdiction;

(2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;

(3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or

(4) Any order modifying custodial rights."

SECTION 8. G.S. 7B-1113 reads as rewritten:

"**§ 7B-1113. Appeals; modification of order after affirmation.**

Any juvenile, juvenile acting through the juvenile's guardian ad litem if one is appointed, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in writing within 10 days after entry of the order. In the case of appeals taken by the respondent parent, the notice of appeal must be signed by both the respondent parent and the attorney for the respondent parent.

Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

SECTION 9. G.S. 7B-1108(b) reads as rewritten:

"(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S. 7B-603~~.G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the Guardian ad Litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading."

SECTION 10. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections ~~(b), (c), and (d)~~(b) and (c) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

SECTION 11(a). G.S. 7B-600 is amended by adding a new subsection to read:

"(c) If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 11(b). G.S. 7B-903 is amended by adding a new subsection to read:

"(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile."

SECTION 11(c). G.S. 7B-906 is amended by adding a new subsection to read:

"(g) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 11(d). G.S. 7B-907 is amended by adding a new subsection to read:

"(f) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 12. G.S. 14-16.10(1) reads as rewritten:

"The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in ~~G.S. 7B-1501(18a).~~G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts."

SECTION 13. Section 12 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1048:
Revise to Juvenile Code.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Ross
Date:	April 22, 2003	**Summary by:**	R. Erika Churchill
Version:	H1048-CSST-13 v.5		Committee Counsel

SUMMARY: The proposed committee substitute would make various changes to Subchapter 1 of Chapter 7B, the Juvenile Code.

CURRENT LAW and BILL ANALYSIS:

Sections 1 and 2. Current law requires the DSS director to prepare a report for the court, which is to be made available to the court immediately following adjudication, containing the results of any mental health evaluations, a home placement plan and a treatment plan for the juvenile. G.S. 7B-304. In a separate statute, it is also the DSS is also required to prepare a predisposition report for the court, which is also to be available to the court following adjudication. The proposed committee substitute would merge the two statutes into one, making both clearly applicable to abuse, neglect and dependency proceedings. Both current statutes were enacted prior to the revision of the Juvenile Code that separated out undisciplined and delinquency proceedings.

Section 3. The proposed committee substitute would amend the wording of the ground for termination of parental rights based upon dependency as defined in G.S. 7B-101 to conform the wording of that definition of dependency.

Section 4. The proposed committee substitute would conform the requirement for the appointment of a guardian ad litem for the parent in a termination of parental rights proceeding to the stated reasons of incapability to parent in the grounds for termination of parental rights. Without the clarification, a guardian ad litem for the parent would technically have to be appointed in every case alleging dependency as a ground for termination of parental rights, even those where the parent is not alleged to be incompetent.

Section 5. The proposed committee substitute would add to the purposes of the Juvenile Code the stated purpose of providing standards for ensuring the best interests of the juvenile are foremost in consideration by the court. The statement is consistent with the Adoption and Safe Families Act of 1997 and current case law.

Section 6. The proposed committee substitute would add a new section to Article 4, Venue; Petitions, to direct the clerk's office to provide a copy of the petition and any notices of hearings to the local guardian ad litem's office when a petition alleging abuse or neglect is filed. A guardian ad litem is to be appointed in either situation under G.S. 7B-601(a), but often the official appointment is during or after the non-secure custody hearing. The guardian ad litem's office could begin their work prior to this time, and attend the non-secure custody hearing, if they were notified of the existence of the case.

Sections 7 and 8. The proposed committee substitute would require that in the case of an appeal of either a court order in either an abuse, neglect or dependency action or a termination of parental rights action taken by a respondent party that the respondent must sign the notice of appeal in addition to that party's attorney.

Section 9. The proposed committee substitute would clarify that guardians ad litem from the Guardian ad Litem Program are to be appointed in only those termination of parental rights cases to represent children who are or have been involved in an abuse, neglect or dependency proceedings. This amendment would resolve the conflict with G.S. 7B-1200, which creates the Guardian ad Litem program for the specific purpose of representing children who are the subject of an abuse, neglect, or dependency judicial proceedings, and G.S.7B-601, which details the responsibilities of the Guardian ad Litem.

Section 10. The proposed committee substitute would delete a reference to a non-existent statute subsection.

Section 11(a)-(d). The proposed committee substitute would require that the court verify the person receiving custody, or being appointed guardian, of a juvenile understands the placement and has adequate resources to appropriately care for the juvenile when the court is conducting a permanency planning hearing. The requirement is added to each statute where appointment of a guardian or placement through custody can be accomplished.

Section 12. The proposed committee substitute would for an increased penalty for endangering persons involved in juvenile abuse, neglect and dependency actions, by including those persons in the definition of court personnel. (Effective December 1, 2003.)

BACKGROUND: The recommendations for the bill came from the Juvenile Code Revision Committee of the North Carolina Court Improvement Project is an inter-disciplinary committee, made up of individuals who represent the various players in the court system handling abuse, neglect, dependency, and termination of parental rights cases. On the committee are representatives of Children's Services Division of DHHS, Court Improvement Project, Guardian ad Litem Program, DSS Attorneys Association, juvenile court judges, child welfare attorneys with the Office of the Attorney General, attorneys from Indigent Defense Services, and others.

EFFECTIVE DATE: The bill would become effective when it becomes law, except as noted above for Section 12.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 999

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Hackney, Sauls (Primary Sponsors); Insko and Lewis.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1040
Corrected Copy 4/15/03

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Sauls, Gibson (Primary Sponsors); Barbee, Clary, Gorman, Haire, Hilton, L. Johnson, Justice, Kiser, LaRoque, Lewis, McHenry, Moore, Munford, Pate, Stiller, Walker, K. Williams, and G. Wilson.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

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

HOUSE BILLS 999 AND 1040: Toner/Inkjet Cartridges

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney & Sauls; Rep. Sauls & Gibson
Date:	April 22, 2003		
Version:	1st Edition	**Summary by:**	Susan L. Sitze Committee Counsel

SUMMARY: ***House Bills 999 and 1040 are identical bills that make void and unenforceable as a matter of public policy any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge.***

BILL ANALYSIS: These bills would create a new G.S. 75-36 which would declare any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge to be void and unenforceable as a matter of public policy.

House Judiciary I Committee

April 22, 2003
5:00 p.m. meeting

Minutes

The House Judiciary I Committee met on Tuesday, April 22, 2003 5:00 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, Capps, Daughtry, Harrell, Insko, Miller, Ross, and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Vice Chair Ross presided over the continuation of the discussion of House Bill 999 and 1040, AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE, (Attachments III and IV). The bill was explained and views of opposing sides of the issue were heard during the 10:00 a.m. meeting of the committee that same day. The bill analysis, prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment V).

Mr. Robert Wood, Lazer Recharge of Carolina, Inc., Cary, North Carolina, was recognized and spoke in support of the bill.

Mr. Sandy Sands, representing Lexmark Corporation, again spoke in opposition to the bill.

Considerable committee discussion followed.

Representative Hackney moved for a favorable report.

Representative Harrell offered an amendment, (Attachment VI), and moved its adoption. Discussion followed and Representative Hackney spoke in opposition to the motion.

Representative Daughtry stated his opposition to the amendment.

Upon vote of the committee, the amendment failed.

The motion for a favorable report was again before the committee. The motion carried, and House Bill 999 was given a favorable report, (Attachment VII).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
TUESDAY, APRIL 22, 2003
PM MEETING

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 999 – TONER/INKJET CARTRIDGES
REPRESENTATIVE HACKNEY

HOUSE BILL 1040 – TONER/INKJET CARTRIDGES
REPRESENTATIVE SAULS

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — **Name of Committee**

April 22, 2003 pm mtg. — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Skip London	Static Control
Dean Malsom	Laser Consultants, Inc.
Robert Wood	Laser Recharge of Carolina, Inc.
Charles Taylor	Static Control Components
Bill Martin	ourmark
Peter Haus	H.M.W.
Ken Gould	WCSR
Sandy Sands	WCSK
Pat Hunter	Lexmark
Mary Mercer	Poyner + Spruill
Boyd Cable	City of Charlotte

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glen Mowery	Charlotte-Mecklenburg Police Dept
Chad Essick	Edmisten & Webb
David Barnes	Poyner Spruill LLP
RC Adams	RCA PLLC
Derek Graham	DPI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 999

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Hackney, Sauls (Primary Sponsors); Insko and Lewis.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1040
Corrected Copy 4/15/03

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Sauls, Gibson (Primary Sponsors); Barbee, Clary, Gorman, Haire, Hilton, L. Johnson, Justice, Kiser, LaRoque, Lewis, McHenry, Moore, Munford, Pate, Stiller, Walker, K. Williams, and G. Wilson.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

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

HOUSE BILLS 999 AND 1040: Toner/Inkjet Cartridges

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney & Sauls; Rep. Sauls & Gibson
Date:	April 22, 2003		
Version:	1st Edition	**Summary by:**	Susan L. Sitze Committee Counsel

SUMMARY: ***House Bills 999 and 1040 are identical bills that make void and unenforceable as a matter of public policy any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge.***

BILL ANALYSIS: These bills would create a new G.S. 75-36 which would declare any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge to be void and unenforceable as a matter of public policy.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

NO

EDITION No. _____

H. B. No. 999 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Harrell
Sen.)

moves to amend the bill on page 1, line ~~10~~ 5

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"TONER OR INKJET CARTRIDGE WHEN THE AGREEMENT OR CONTRACT IS PROCURED IN VIOLATION OF ARTICLE 1 OF CHAPTER 75 OF THE GENERAL STATUTES. ~~UNFAIR AND DECEPTIVE TRADE PRACTICE~~ "

and on page 1, line 13

by rewriting the line to read:

" matter of public policy if the procurement of that agreement or contract violates the provisions of Article 1 of Chapter 75 of the General Statutes."

SIGNED J Harrell

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

ATTACHMENT VII

2003 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. 999 A BILL TO BE ENTITLED AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

April 23, 2003

Minutes

The House Judiciary I Committee met on Wednesday, April 23, 2003, at 8:30 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, Capps, Harrell, Insko, Ross, Sexton, and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Representative Ross was recognized for a continuation of the discussion of House Bill 1048, AN ACT TO MAKE REVISIONS UNDER THE JUVENILE CODE REGARDING GUARDIANS AD LITEM. The bill was explained and discussed during the 10:00 a.m. meeting on April 22, and a proposed committee substitute was adopted at that time for the purpose of discussion. Representative Ross offered a new proposed committee substitute, (Attachment III), and moved that it be adopted for the purpose of discussion. The motion carried. She reminded the committee that during the previous discussion, Chairman Hackney raised the issue of whether a parent had to also sign the notice of appeal. The new committee substitute removes the provision requiring the respondent party to an order of the court appealing that order to sign the notice of appeal. She added that she was looking at additional ways to compromise on this amendment to find a way to protect the attorneys and protect the parents.

The explanation continued for the bill. A copy of the bill analysis is attached, (Attachment IV).

Chairman Hackney stated that in his district, in difficult custody cases not involving abuse or neglect, the guardian ad litem's office is willing to provide, and has provided a guardian ad litem. He said that the bill would appear to prohibit that action. He questioned why that should be prohibited.

Ms. Kella Hatcher, Administrative Office of the Courts, Guardian Ad Litem Program, was recognized to comment. She said that G.S. 7B-1200 and 7B-601 makes it clear that the guardian ad litem program is limited to representing children who are the subject of a petition for abuse, neglect or dependency. She said that appointing people from that program to cases in which the child is not the subject of abuse, neglect and dependency petition is in conflict with those statutes.

Representative Ross offered an amendment, (Attachment V), and moved its adoption. Following a brief explanation, the amendment was adopted.

Representative Ross moved a favorable report for a new committee substitute incorporating the amendment and an unfavorable report for the original bill. The motion

carried, (Attachment VI). A copy of the final committee substitute is attached, (Attachment VII).

Representatives Insko and Justus were recognized to explain House Bill 992, AN ACT TO AUTHORIZE PUBLIC AND NONPROFIT HOSPITALS TO USE THE SET-OFF DEBT COLLECTION ACT, (Attachment VIII). Representative Insko stated that the bill adds hospitals to the Debt Setoff Collection Act, and allows public and nonprofit hospitals to utilize the act for the purposes of collecting money after reasonable efforts to collect from any third-party payers. Representative Justus offered support for the bill.

Mr. Linwood Jones, North Carolina Hospital Association, spoke in support of the bill.

Representative Ross noted that she has been told that there is no requirement that insurance companies pay directly to the emergency room and that there have been situations where an insurance company will send a check to the patient and the patient fails to pay the bill. She noted the need to solve this problem.

Ms. Erika Churchill, Committee Counsel, was recognized for additional explanation, and her bill analysis is attached, (Attachment IX).

Chairman Hackney noted that this would be the first time that a non-governmental organization would be allowed benefit from the set-off, and that this would be an important policy decision.

Following considerable committee discussion, Representative Ross moved that the bill be given a favorable report. The motion carried, (Attachment X).

Vice Chair Ross assumed the chair and recognized Representative Hackney for an explanation of House Bill 1126, AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION, (Attachment XI). A proposed committee substitute, (Attachment XII) was distributed and Representative West moved that it be adopted for the purpose of discussion. The motion carried. Representative Hackney said that the bill would establish collaborative law procedures allowing parties seeking a divorce and their attorneys to settle their disputes by a written agreement with limited judicial intervention.

Ms. Susan Sitze, Committee Counsel, was recognized to offer additional explanation. She stated that when parties enter into a collaborative law procedure, both the parties and the attorneys sign a written agreement as to how the procedure is going to work. Her bill analysis is attached, (Attachment XIII).

Vice Chair Ross asked if the Family Law Section of the Bar Association had reviewed the bill. Representative Hackney stated that they were aware of the bill. He

said that Ms. Pamela Simon, an attorney from Statesville, had made a presentation to the Family Law Section meeting last spring. He noted that the bill was introduced at the suggestion of Ms. Simon. He said that he did not believe that the Family Law Section objected to the bill and that he would ask for suggestions from them prior to enactment of the legislation.

Representative Harrell moved for a favorable report for the committee substitute and an unfavorable report for the original bill. The motion carried, (Attachment XIV).

Representative Hackney was again recognized for an explanation of House Bill 1046, AN ACT TO DEFINE THE OFFENSE OF AGGRESSIVE DRIVING, (Attachment XV). A proposed committee substitute was distributed, (Attachment XVI), and Representative Capps moved that it be adopted for the purpose of discussion. The motion carried. Representative Hackney stated that the bill creates a new motor vehicle offense of aggressive driving. He said that he had read about a similar law in the State of Arizona. He also noted the aggressive nature of commuters that he observed during his daily drive on Interstate 40, and decided for public safety reasons to introduce the bill. The basic concept of aggressive driving would be that one is speeding and also committing two or more additional offenses at the same time. Aggressive driving would carry the same penalty as reckless driving which is four points.

Ms. Sitze was recognized to offer additional explanation. She pointed out the offenses that were included in the bill and briefly discussed the penalty for violation. Those offenses are outlined in her bill analysis that is included in the attachments, (Attachment XVII).

Following committee discussion, Representative Hackney offered an amendment, (Attachment XVIII) to amend the bill on page 3, lines 6-7 by inserting "aggressive driving" and "5". Upon vote of the members, the amendment was adopted.

Representative Capps moved a favorable report for a new committee substitute incorporating the amendment. The motion carried, (Attachment XVIX). A copy of the new committee substitute is attached, (Attachment XX).

Representative Alexander was recognized to continue the discussion of House Bill 562, AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS. The bill was previously discussed during the meetings on April 1 and April 22, 2003. She offered a new proposed committee substitute that incorporated the technical amendment that was adopted on April 22, (Attachment XXI),

and moved that the new committee substitute be adopted for the purpose of discussion. The motion carried.

Following brief discussion, Representative Ross offered an amendment, (Attachment XXII) to give any profits generated from the program to the county school fund.

Representative Alexander spoke in opposition to the amendment and asked the members to vote against it.

Representative Capps spoke in support of the amendment. He asked why the City of Charlotte had chosen to have the funds directed to the city rather than the schools.

Mr. Boyd Cauble, City of Charlotte, said that the city wanted the revenue to go towards the city's traffic safety program, and that this program includes safety issues related to schools such as school crossings, etc. By contrast, he said that if the revenue goes to the school system, they may spend it in any way that they choose.

No action was taken on the amendment.

The meeting was adjourned at 9:55 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
WEDNESDAY, APRIL 23, 2003
8:30 A.M.

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 992 DEBT SETOFF FOR HOSPITAL SERVICES
REPRESENTATIVE INSKO

HOUSE BILL 1046 – AGGRESSIVE DRIVING
REPRESENTATIVE HACKNEY

HOUSE BILL 1048 – REVISE TO JUVENILE CODE/GUARDIANS AD LITEM
REPRESENTATIVE ROSS

HOUSE BILL 1126 – COLLABORATIVE LAW PROCEDURES
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 23, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Cauble	City of Charlotte
Eddie Zurich	NC Dept of Revenue
Kella Hatcher	AOC Guardian ad Litem
Lana Dial	AOC - Court Improvement
Hugh Tilson	NCHA
Kimwood Jones	NCHA
[illegible]	DJDP-CPSV
[illegible]	NC DSS
Julian Mann	OAH
Rob Dusablon	NC Stat Weather
[illegible]	SABOT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1048
PROPOSED COMMITTEE SUBSTITUTE H1048-CSST-13 [v.6]

4/22/2003 2:38:44 PM

Short Title: Juvenile Code Revisions/Ct. Improvement Proj. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE JUVENILE CODE AS RECOMMENDED BY THE NORTH CAROLINA JUVENILE COURT IMPROVEMENT PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"**§ 7B-808. Predisposition ~~investigation and~~ report.**

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.~~

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503, a placement plan and a treatment plan the director deems appropriate to meet the juvenile's needs.

(c) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure

would not be in the best interest of the juvenile. Such local rules or administrative order may not:

(1) Prohibit a party entitled by law to receive confidential information from receiving that information.

(2) Allow disclosure of any confidential source protected by statute."

SECTION 3. G.S. 7B-1111(a)(6) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other ~~similar~~ cause or ~~condition.~~condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

...."

SECTION 4. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to ~~G.S. 7B-1111(6); or~~G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or

50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

SECTION 5. G.S. 7B-100 is amended by adding the following new subdivision to read:

"This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

...

(5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time."

SECTION 6. Article 4 of Chapter 7Bof the General Statutes is amended by adding a new section G.S. 7B-408 to read:

"**§ 7B-408. Copy of petition and notices to guardian ad litem.**

Immediately after a petition has been filed alleging that a juvenile is abused or neglected, the clerk shall provide a copy of the petition and any notices of hearings to the local guardian ad litem office."

SECTION 7. G.S. 7B-1108(b) reads as rewritten:

"(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S. 7B-603.~~G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the Guardian ad Litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading."

SECTION 8. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse

and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections ~~(b), (c), and (d)~~(b) and (c) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

SECTION 9(a). G.S. 7B-600 is amended by adding a new subsection to read:

"(c) If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 9(b). G.S. 7B-903 is amended by adding a new subsection to read:

"(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile."

SECTION 9(c). G.S. 7B-906 is amended by adding a new subsection to read:

"(g) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 9(d). G.S. 7B-907 is amended by adding a new subsection to read:

"(f) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 10. G.S. 14-16.10(1) reads as rewritten:

"The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in ~~G.S.~~

~~7B-1501(18a).~~G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts."

SECTION 11. Section 10 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1048:
Revise to Juvenile Code.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Ross
Date:	April 22, 2003	**Summary by:**	R. Erika Churchill
Version:	H1048-CSST-13 v.5		Committee Counsel

SUMMARY: The proposed committee substitute would make various changes to Subchapter 1 of Chapter 7B, the Juvenile Code.

CURRENT LAW and BILL ANALYSIS:

Sections 1 and 2. Current law requires the DSS director to prepare a report for the court, which is to be made available to the court immediately following adjudication, containing the results of any mental health evaluations, a home placement plan and a treatment plan for the juvenile. G.S. 7B-304. In a separate statute, it is also the DSS is also required to prepare a predisposition report for the court, which is also to be available to the court following adjudication. The proposed committee substitute would merge the two statutes into one, making both clearly applicable to abuse, neglect and dependency proceedings. Both current statutes were enacted prior to the revision of the Juvenile Code that separated out undisciplined and delinquency proceedings.

Section 3. The proposed committee substitute would amend the wording of the ground for termination of parental rights based upon dependency as defined in G.S. 7B-101 to conform the wording of that definition of dependency.

Section 4. The proposed committee substitute would conform the requirement for the appointment of a guardian ad litem for the parent in a termination of parental rights proceeding to the stated reasons of incapability to parent in the grounds for termination of parental rights. Without the clarification, a guardian ad litem for the parent would technically have to be appointed in every case alleging dependency as a ground for termination of parental rights, even those where the parent is not alleged to be incompetent.

Section 5. The proposed committee substitute would add to the purposes of the Juvenile Code the stated purpose of providing standards for ensuring the best interests of the juvenile are foremost in consideration by the court. The statement is consistent with the Adoption and Safe Families Act of 1997 and current case law.

Section 6. The proposed committee substitute would add a new section to Article 4, Venue; Petitions, to direct the clerk's office to provide a copy of the petition and any notices of hearings to the local guardian ad litem's office when a petition alleging abuse or neglect is filed. A guardian ad litem is to be appointed in either situation under G.S. 7B-601(a), but often the official appointment is during or after the non-secure custody hearing. The guardian ad litem's office could begin their work prior to this time, and attend the non-secure custody hearing, if they were notified of the existence of the case.

Sections 7 and 8. The proposed committee substitute would require that in the case of an appeal of either a court order in either an abuse, neglect or dependency action or a termination of parental rights action taken by a respondent party that the respondent must sign the notice of appeal in addition to that party's attorney.

Section 9. The proposed committee substitute would clarify that guardians ad litem from the Guardian ad Litem Program are to be appointed in only those termination of parental rights cases to represent children who are or have been involved in an abuse, neglect or dependency proceedings. This amendment would resolve the conflict with G.S. 7B-1200, which creates the Guardian ad Litem program for the specific purpose of representing children who are the subject of an abuse, neglect, or dependency judicial proceedings, and G.S.7B-601, which details the responsibilities of the Guardian ad Litem.

Section 10. The proposed committee substitute would delete a reference to a non-existent statute subsection.

Section 11(a)-(d). The proposed committee substitute would require that the court verify the person receiving custody, or being appointed guardian, of a juvenile understands the placement and has adequate resources to appropriately care for the juvenile when the court is conducting a permanency planning hearing. The requirement is added to each statute where appointment of a guardian or placement through custody can be accomplished.

Section 12. The proposed committee substitute would provide for an increased penalty for endangering persons involved in juvenile abuse, neglect and dependency actions, by including those persons in the definition of court personnel. (Effective December 1, 2003.)

BACKGROUND: The recommendations for the bill came from the Juvenile Code Revision Committee of the North Carolina Court Improvement Project is an inter-disciplinary committee, made up of individuals who represent the various players in the court system handling abuse, neglect, dependency, and termination of parental rights cases. On the committee are representatives of Children's Services Division of DHHS, Court Improvement Project, Guardian ad Litem Program, DSS Attorneys Association, juvenile court judges, child welfare attorneys with the Office of the Attorney General, attorneys from Indigent Defense Services, and others.

EFFECTIVE DATE: The bill would become effective when it becomes law, except as noted above for Section 12.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H 1048 - CSST - 13 v. 6 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Ross
Sen.)

moves to amend the bill on page 3, line 31

( ) WHICH CHANGES THE TITLE

by inserting the following phrase between "dependency and The" with good cause shown Toca

"or the Guardian ad Litem program consents to the appointment."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 1048 A BILL TO BE ENTITLED AN ACT TO MAKE REVISIONS UNDER THE JUVENILE CODE REGARDING GUARDIANS AD LITEM.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1048
PROPOSED COMMITTEE SUBSTITUTE H1048-PCS45088-ST-13

Short Title: Juvenile Code Revisions/Ct. Improvement Proj. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE JUVENILE CODE AS RECOMMENDED BY THE NORTH CAROLINA JUVENILE COURT IMPROVEMENT PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"**§ 7B-808. Predisposition ~~investigation and~~ report.**

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.~~

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs.

(c) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure

would not be in the best interest of the juvenile. Such local rules or administrative order may not:

(1) Prohibit a party entitled by law to receive confidential information from receiving that information.

(2) Allow disclosure of any confidential source protected by statute."

SECTION 3. G.S. 7B-1111(a)(6) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

...

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other ~~similar~~ cause or ~~condition.~~condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

...."

SECTION 4. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to ~~G.S. 7B-1111(6); or~~G.S. 7B-1111(6), and the incapability to provide proper care and supervision pursuant to that provision is the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or

50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

SECTION 5. G.S. 7B-100 is amended by adding the following new subdivision to read:

"This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

...

(5) To provide standards, consistent with the Adoption and Safe Families Act of 1997, P.L. 105-89, for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time."

SECTION 6. Article 4 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-408. Copy of petition and notices to guardian ad litem.**

Immediately after a petition has been filed alleging that a juvenile is abused or neglected, the clerk shall provide a copy of the petition and any notices of hearings to the local guardian ad litem office."

SECTION 7. G.S. 7B-1108(b) reads as rewritten:

"(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S. 7B-603.~~G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading."

SECTION 8. G.S. 7B-1003 reads as rewritten:

"**§ 7B-1003. Disposition pending appeal.**

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, may issue unless the court

orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections ~~(b), (c), and (d)~~(b) and (c) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

SECTION 9.(a) G.S. 7B-600 is amended by adding a new subsection to read:

"(c) If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the juvenile understands the legal significance of the appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 9.(b) G.S. 7B-903 is amended by adding a new subsection to read:

"(c) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents, the court shall verify that the person receiving custody of the juvenile understands the legal significance of the placement and will have adequate resources to care appropriately for the juvenile."

SECTION 9.(c) G.S. 7B-906 is amended by adding a new subsection to read:

"(g) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 9.(d) G.S. 7B-907 is amended by adding a new subsection to read:

"(f) If the court determines that the juvenile shall be placed in the custody of an individual other than the parents or appoints an individual guardian of the person pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or being appointed as guardian of the juvenile understands the legal significance of the placement or appointment and will have adequate resources to care appropriately for the juvenile."

SECTION 10. G.S. 14-16.10(1) reads as rewritten:

"The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender;

court reporter; juvenile court counselor as defined in ~~G.S. 7B-1501(18a).~~G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts."

SECTION 11. Section 10 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 992

Short Title:	Debt Setoff for Hospital Services.	(Public)
Sponsors:	Representatives Insko and Justus (Primary Sponsors).	
Referred to:	Judiciary I.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC AND NONPROFIT HOSPITALS TO USE THE SET-OFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2(6) reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

...

(6) Local agency. – ~~A~~ Any of the following:

a. A county, to the extent it is not considered a State ~~agency,~~agency.

b. ~~or a~~A municipality.

c. A public hospital as defined in G.S. 131E-48, to the extent it is not considered a State agency."

SECTION 2. G.S. 105A-5 reads as rewritten:

"**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt, that the agency intends to apply the debtor's refund against the debt, and that a collection assistance fee of fifteen dollars ($15.00) will be added to the debt if it is submitted for setoff. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. If the debt is for hospital services, the

notice must also inform the debtor of the right to contest a debt setoff for hospital services based on family income, as provided in subsection (b1) of this section.

(b1) Hospital Services. – A local agency may submit a debt for hospital services for collection under this Chapter only if it has made reasonable efforts to collect the bill from any third-party payers and has waited for a period of at least 120 days after the mailing of the bill for the hospital services to the debtor's last known address. A local agency may not submit for collection a debt for hospital services if any of the following conditions are met:

(1) The debtor and local agency have entered into a written payment agreement with respect to the debt and the debtor is current in meeting the obligations of the agreement.

(2) Payment for the health care service by a third-party payer is under appeal.

(3) The debtor demonstrates that the debtor's family income is at or below one hundred fifty percent (150%) of the applicable federal poverty level, as defined in G.S. 108A-70.18, based on the debtor's family size.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt. In the case of a debt for hospital services, the hearing must also determine whether any of the conditions set out in subsection (b1) bars submission of the debt for collection.

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance fees provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fees provided in G.S. 105A-13. That portion of the amount returned that reflects the collection assistance fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance fees provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 3. This act becomes effective January 1, 2004, and applies to income tax refunds determined on or after that date.

HOUSE BILL 992:
Debt Setoff for Hospital Services.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Insko
Date:	April 23, 2003	**Summary by:**	R. Erika Churchill
Version:	Edition 1		Committee Counsel

SUMMARY: The bill would allow public and nonprofit hospitals to utilize the Setoff Debt Collection Act for the purposes of collecting monies owed to them.

CURRENT LAW: The Debt Setoff Collection Act was enacted to provide the Department of Revenue and claimant agencies a mechanism under which to identify debtors owing money to the State or a local government that also qualify for a NC income tax refund. Currently, the entities entitled to "setoff" a tax refund are a claimant agency, which is defined as a State agency or a local agency.

Local agencies are required to give written notice to the debtor of the intent to submit the debt for setoff, explaining the basis for the agency's claim, that the agency intends to apply the debtor's refund against the debt, and an administrative fee of $15 will be charged.

BILL ANALYSIS:

Section 1. The bill would amend the definition of local agency to include a public hospital as defined in G.S. 131E-48, to the extent that hospital is not considered a State agency. G.S. 131E-48(6) defines public hospital as any one of the following:

1. Any hospital facility operated on a nonprofit basis.
2. Any hospital that is owned or operated by the State.
3. Any hospital meeting the definition of public hospital in G.S. 159-39(a), i.e. a county or city operated hospital.

Section 2. The bill would amend the procedures to setoff a tax refund by a local agency to include public hospitals. Public hospitals would allowed to submit a debt for collection only after making reasonable efforts to collect from any third-party payers and waiting 120 days from mailing the bill to the debtor. If any of the following circumstances exist, the hospital may NOT submit the debt for collection:

- The hospital and the debtor have entered into a written agreement for payment and the debtor is current in meeting the obligations of the written agreement.
- Payment of the health care service by a third party payer is under appeal.
- The debtor's family income is at or below 150% of the federal poverty level.

EFFECTIVE DATE: The act would become effective January 1, 2004 and apply to income tax refunds determined on or after that date.

2003 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. 992 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE PUBLIC AND NONPROFIT HOSPITALS TO USE THE SET-OFF DEBT COLLECTION 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 the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1126

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Collaborative Law Proceedings.

"**§ 50-65. Collaborative law; definition.**

(a) As an alternative to judicial disposition of issues arising in a civil action under this Chapter, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedure.

(b) Collaborative law is a procedure in which parties who are separated and are seeking a divorce and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The parties' counsel shall not serve as litigation counsel, except to ask the court to approve the settlement agreement.

"**§ 50-66. Agreement requirements.**

A collaborative law agreement must include provisions for all of the following:

(1) Full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case.

(2) Suspending court intervention in the dispute while the parties are using collaborative law procedures.

(3) Hiring experts, as jointly agreed, to be used in the procedure.
(4) Withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.
(5) Other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

"**§ 50-67. Judgment on collaborative law agreement.**

Notwithstanding any other rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) Provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation.
(2) Is signed by each party to the agreement and the attorney of each party.

"**§ 50-68. Acts prohibited by court.**

Subject to G.S. 50-70, unless a party notifies the court that the collaborative law procedures did not result in a settlement, a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute shall not:

(1) Set a hearing or trial in the case.
(2) Impose discovery deadlines.
(3) Require compliance with scheduling orders.
(4) Dismiss the case.

"**§ 50-69. Notice to court of settlement.**

The parties shall notify the court if the collaborative law procedures result in a settlement. However, if the collaborative law procedures do not result in a settlement, the parties shall file the following:

(1) A status report with the court not later than 180 days after the date of the written agreement to use the procedures. The court shall establish what information shall be included in the status report.
(2) A status report within one year from the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

"**§ 50-70. Disposition by court; failure to reach settlement.**

If the collaborative law procedures do not result in a settlement within two years from the date the collaborative law procedures were initiated, upon notice to the court by the parties of their failure to reach a settlement, the court may do either of the following:

(1) Set the civil action for trial on the regular docket.
(2) Dismiss the civil action without prejudice."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1126
PROPOSED COMMITTEE SUBSTITUTE H1126-CSSA-7 [v.1]

4/22/2003 6:52:14 PM

Short Title: Collaborative Law Procedures/Family Law. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Collaborative Law Proceedings.

"**§ 50-65. Collaborative law; definition.**

(a) As an alternative to judicial disposition of issues arising in a civil action under this Chapter, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedure.

(b) Collaborative law is a procedure in which parties who are separated and are seeking a divorce and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate. The parties' counsel shall not serve as litigation counsel, except to ask the court to approve the settlement agreement.

(c) No provision in this Article shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including but not limited to mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' counsel for the collaborative

law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement.

"**§ 50-66. Agreement requirements.**

A collaborative law agreement must include provisions for all of the following:

(1) Full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case.

(2) Suspending court intervention in the dispute while the parties are using collaborative law procedures.

(3) Hiring experts, as jointly agreed, to be used in the procedure.

(4) Withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.

(5) Other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

"**§ 50-67. Judgment on collaborative law agreement.**

Notwithstanding any other rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) Provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation.

(2) Is signed by each party to the agreement and the attorney of each party.

"**§ 50-68. Acts prohibited by court.**

Except as otherwise provided in G.S. 50-70, if a civil action is pending, unless a party notifies the court that the collaborative law procedures did not result in a settlement, a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute shall not:

(1) Set a hearing or trial in the case.

(2) Impose discovery deadlines.

(3) Require compliance with scheduling orders.

(4) Dismiss the case.

"**§ 50-69. Notice to court of settlement.**

If a civil action is pending, the parties shall notify the court if the collaborative law procedures result in a settlement. However, if the collaborative law procedures do not result in a settlement, the parties shall file the following:

(1) A status report with the court not later than 180 days after the date of the written agreement to use the procedures. The court shall establish what information shall be included in the status report.

(2) A status report within one year from the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

"**§ 50-70. Failure to reach settlement; disposition by court; duty of attorney to withdraw.**

(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action.

(b) If a civil action is pending and the collaborative law procedures do not result in a settlement within two years from the date the collaborative law procedures were initiated, upon notice to the court by the parties of their failure to reach a settlement, the court may do either of the following:

(1) Set the civil action for trial on the regular docket.

(2) Dismiss the civil action without prejudice.

(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law proceedings shall withdraw as counsel for the parties and may not represent the parties in the civil action proceedings."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 1126:
Collaborative Law Procedures/Family Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 23, 2003	**Summary by:**	Susan L. Sitze
Version:	H1126-CSSA-7[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1126 would establish collaborative law procedures in Chapter 50 of the General Statutes whereby parties seeking a divorce and their attorneys may settle their disputes by written agreement with limited judicial intervention.***

BILL ANALYSIS: **Section 1** of the PCS for House Bill 1126 would create a new Article 4 in Chapter 50 of the General Statutes. Chapter 50 covers divorce, alimony and child support generally.

G.S. 50-65 would authorize the use of collaborative law proceedings to settle issues arising from the dissolution of a marital relationship. Collaborative law is "a procedure in which parties who are separated and are seeking a divorce and their counsel agree, in writing, to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis without resorting to judicial intervention, except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court deems appropriate". Subsection (c) of this statute also clarifies that the use of collaborative law proceedings does not prohibit the use of mediation or arbitration to reach a settlement of any of the issues.

G.S. 50-66 provides that a collaborative law agreement must include provisions for all of the following:

- Full and candid exchange of information between the parties and their attorneys.
- Suspending any court intervention in the dispute while the parties are using collaborative law procedures.
- Hiring experts to be used in the procedure.
- Withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute.
- Other provisions as agreed to by the parties.

G.S. 50-67 provides that once a settlement is reached through collaborative law procedures, a party is entitled to judgment on the agreement if the agreement provides in a prominently displayed statement that the agreement is not subject to revocation and is signed by each party to the agreement and the attorney of each party.

G.S. 50-68 provides that if a civil action is pending, unless a party notifies the court that collaborative law procedures did not result in a settlement, a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute shall not set a hearing or trial in the case, impose discovery deadlines, require compliance with scheduling orders, or dismiss the case.

G.S. 50-69 requires the parties to notify the court, if a civil action is pending, if the collaborative law procedures result in a settlement. If the collaborative law procedures have not resulted

in a settlement, the parties shall file a status report with the court not later than 180 days after the date of the written agreement to use collaborative law procedures and a status report within one year from the date of the written agreement, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

G.S. 50-70 allows the parties to file a civil action if they fail to reach a settlement. If a civil action is already pending and no settlement is reached within two years of the written agreement to use collaborative law procedures, upon notice to the court by the parties of their failure to reach a settlement, the court may either set the civil action for trial or dismiss the case without prejudice. Subsection (c) of this section requires the attorneys representing the parties in the collaborative law proceedings to withdraw as counsel for the parties if a civil action is filed or set for trial.

Section 2 provides that this act is effective October 1, 2003.

2003 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. 1126 A BILL TO BE ENTITLED AN ACT ESTABLISHING COLLABORATIVE LAW PROCEDURES UNDER CHAPTER 50 OF THE GENERAL STATUTES WHEREBY PARTIES SEEKING A DIVORCE AND THEIR ATTORNEYS MAY SETTLE THEIR DISPUTES BY WRITTEN AGREEMENT WITH LIMITED JUDICIAL INTERVENTION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1046

Short Title:	Aggressive Driving.	(Public)
Sponsors:	Representatives Hackney; Bowie and Goodwin.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO DEFINE THE OFFENSE OF AGGRESSIVE DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.6. Aggressive driving.**

(a) A person commits the offense of aggressive driving if both of the following occur:

(1) During the course of conduct the person commits a violation of either G.S. 20-140 or G.S. 20-141 and at least two of the following offenses:

a. Running through a red light.

b. Running through a stop sign.

c. Illegal passing.

d. Following too closely.

e. Failing to yield right-of-way.

(2) The person's driving is an immediate hazard to another person or vehicle.

(b) A person convicted of aggressive driving is guilty of a Class 2 misdemeanor."

SECTION 2. G.S. 20-16(c) reads as rewritten:

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Aggressive driving	4
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S. 20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4

Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the

(c) For purposes of this section, 'course of conduct' means a series of acts committed during a single continuous period of driving."

SECTION 2. G.S. 20-16(a)(9) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2003

...

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour, or of~~hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour;~~hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

..."

SECTION 3. G.S. 20-16(c) reads as rewritten:

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Aggressive driving	4
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial

Motor Vehicle	
Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S. 20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4
Failure to report accident where such report is required	4
Speeding in a school zone in excess of the posted school zone speed limit	4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle	4
All other moving violations	3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration

Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

SECTION 4. G.S. 20-17(a)(6) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(6) ~~Conviction upon~~Conviction, within a period of 12 months, of (i) two charges of reckless ~~driving committed within a period of 12 months.~~driving, (ii) two charges of aggressive driving, or (iii) one or more charges of reckless driving and one or more charges of aggressive driving.

..."

SECTION 5. G.S. 20-17(a)(7) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(7) Conviction upon one charge of reckless driving or one charge of aggressive driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

..."

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 1046: Aggressive Driving

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 23, 2003	**Summary by:**	Susan L. Sitze
Version:	H1046-CSSA-8[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1046 defines the offense of aggressive driving.***

BILL ANALYSIS: **Section 1** of the PCS creates a new motor vehicle offense of aggressive driving. A person commits the offense of aggressive driving if two criteria are met:

1. During a course of conduct the person commits a speeding violation and at least <u>two</u> of the following:
   - Running through a red light
   - Running through a stop sign
   - Illegal passing
   - Following too closely
   - Failing to yield right-of-way

AND

2. The person's driving is an immediate hazard to another person or vehicle.

The offense is a Class 2 misdemeanor.

Section 2 of the PCS amends G.S. 20-16(a)(9) to allow the Division of Motor Vehicles (DMV) to suspend the license of a person convicted, within a 12 month period, of one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour. This suspension is permissive and the suspension period is in the discretion of the DMV, but shall not exceed 6 months.

Section 3 of the PCS amends G.S. 20-16(c) to provide for 4 driver's license points for a conviction of aggressive driving.

Section 4 of the PCS amends G.S. 20-17(a)(6) to provide for a mandatory revocation of the license of a person convicted, within a 12 month period, of two charges of aggressive driving, or one or more charges of reckless driving and one or more charges of aggressive driving. The revocation is effective for 1 year.

Section 5 of the PCS amends G.S. 20-17(a)(7) to provide for a mandatory revocation of the license of a person convicted of one charge of aggressive driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

Section 6 provides that the act is effective December 1, 2003 and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT XVIII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H1046-CSSA-8 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 3, lines 6-7

2 ( ) WHICH CHANGES THE TITLE

3 by inserting between the lines the following:

4 " Aggressive Driving ..... 5 "

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 1046 A BILL TO BE ENTITLED AN ACT TO DEFINE THE OFFENSE OF AGGRESSIVE DRIVING.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1046
PROPOSED COMMITTEE SUBSTITUTE H1046-PCS80281-SA-8

Short Title: Aggressive Driving. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO DEFINE THE OFFENSE OF AGGRESSIVE DRIVING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.6. Aggressive driving.**

(a) A person commits the offense of aggressive driving if both of the following occur:

(1) During a course of conduct the person commits a violation of either G.S. 20-141 or G.S. 20-141.1 and at least two of the following offenses:

a. Running through a red light in violation of G.S. 20-158(b)(2) or (b)(3), or G.S. 20-158(c)(2) or G.S. (c)(3).

b. Running through a stop sign in violation of G.S. 20-158(b)(1) or (c)(1).

c. Illegal passing in violation of G.S. 20-149 or G.S. 20-150.

d. Following too closely in violation of G.S. 20-152.

e. Failing to yield right-of-way in violation of G.S. 20-155, 20-156, 20-158(b)(4) or (c)(4), or 20-158.1.

(2) The person's driving is an immediate hazard to another person or vehicle.

(b) A person convicted of aggressive driving is guilty of a Class 2 misdemeanor.

(c) For purposes of this section, 'course of conduct' means a series of acts committed during a single continuous period of driving."

SECTION 2. G.S. 20-16(a)(9) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

...

(9) Has, within a period of 12 months, been convicted of (i) two or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour, or of~~hour, (ii) one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per ~~hour;~~hour, or (iii) one or more charges of aggressive driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

..."

SECTION 3. G.S. 20-16(c) reads as rewritten:

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

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Aggressive driving	4
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial

Motor Vehicle

Passing stopped school bus 8
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Speeding in violation of G.S. 20-141(j3) 6
Aggressive driving 5
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Running through stop sign 4
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Failing to yield right-of-way 4
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No driver's license or license expired more than one year 4
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Improper plates

Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

SECTION 4. G.S. 20-17(a)(6) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(6) ~~Conviction upon~~Conviction, within a period of 12 months, of (i) two charges of reckless ~~driving committed within a period of 12 months.~~driving, (ii) two charges of aggressive driving, or (iii) one or

more charges of reckless driving and one or more charges of aggressive driving.

..."

SECTION 5. G.S. 20-17(a)(7) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

(7) Conviction upon one charge of reckless driving or one charge of aggressive driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

..."

SECTION 6. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 562
PROPOSED COMMITTEE SUBSTITUTE H562-CSSA-9 [v.1]

4/22/2003 9:08:22 PM

Short Title: Charlotte Photo Speed Measuring Systems. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.4. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation clearly stating the manner in which the violation may be challenged. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) After reasonable deduction of costs of administration, the proceeds of all civil penalties shall be paid to support traffic safety measures in the jurisdiction employing the photographic speed-measuring systems."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.4 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.4(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 562

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

H562-ASA-10 [v.1]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
H562-CSSA-9[v.1]

Representative _____

moves to amend the bill on page 3, lines 1-3
by rewriting those lines to read:

"(5) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the photographic speed-measuring system; paying a contractor for operating the system; and paying any administrative costs incurred by the municipality related to the use of the system.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Judiciary I Committee

April 24, 2003
10:00 a.m. meeting

Minutes

The House Judiciary I Committee met on Thursday, April 24, 2003 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 Capps, Daughtry, Harrell, Insko, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Ms. Susan Sitze, Committee Counsel, was recognized for an explanation of House Bill 1037, AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRIAL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES, (Attachment III). She said that the bill deals with allowing prisoners to escape. She said that the bill does not address the people who actually escape, but the custodial personnel who perhaps willfully or wantonly allow an escape of someone committed to their custody that is committed to the Department of Juvenile Justice and Delinquency Prevention. The bill also allows a youth development center or local confinement facility to photograph a juvenile who has been committed to the facility and allows the facility who took the photograph to release the photograph if the juvenile escapes from that facility. She said that the bill also authorizes the detention of a juvenile who has been transferred to adult court to be held in an approved in a local confinement facility while awaiting trial, or prior to pretrial release. "Local confinement facility" is defined in the bill. A copy of her bill analysis is attached to the minutes, (Attachment IV).

Representative Miller was recognized for comment. He said that the Durham County Commissioners requested the bill because they have experienced some escapes at their juvenile facility and have been unable to release photographs. He noted that he was interested in protecting the rights of juveniles, but that the issue is one of public safety.

Representative Ross expressed concern regarding the co-mingling of 13, 14 and 15-year olds in an adult jail situation. She said that she would feel better if the bill was rewritten to transfer the juvenile to a DSS facility where they are separated from other children who are a much lower level of offenders.

Mr. Don Hargrove, Department of Juvenile Justice, was recognized on commented on "bind-over" facilities.

Representative Luebke introduced Mr. S. Chuck Kitchen, Durham County Attorney, who discussed recent escapes from the Durham juvenile detention home, problems that the police and sheriff's departments had in their investigations, and the need for revision of the statutes regarding juvenile escapes.

Committee discussion followed.

Representative Ross offered an amendment that would delete the detention sections of the bill, (Attachment V).

Mr. Hargrove commented on the current law regarding juveniles who are bound over for trial. He said that juveniles are held in juvenile detention centers, but not in jail. In certain circumstances, juveniles are held in a specialized facility in Rockingham County.

Mr. Hargrove spoke in support of the amendment.

Representative Luebke said that he understood the controversy regarding the detention section of the bill. He noted that the escape and photograph provisions have been addressed and that he would not take a position on the detention amendment.

Representative Miller agreed with Representative Luebke, saying that the commissioners were more concerned with the escape and photograph provisions.

Mr. Kitchen expressed agreement with Representative Luebke.

Representative Capps noted that the language of the bill says that the juveniles would be confined in a special place

Representative Ross said that the committee should hear from many more people before making such a policy change.

The Ross amendment was before the committee. Upon vote of the committee, the vote was tied. It failed for lack of a majority.

Representative Capps offered an amendment, (Attachment VI), and moved its adoption. The amendment would insert the word "separate" in line 27 of page 3. Upon vote of the committee, the amendment was adopted. Representative Ross voted no.

Representative Miller 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 VII). Representative Ross voted against the motion.

Vice Chair Ross assumed the chair.

Chairman Hackney's bill, House Bill 1219, AN ACT TO FURTHER CLARIFY THE DEFINITION OF DIVISIBLE PROPERTY UNDER THE LAWS RELATING TO EQUITABLE DISTRIBUTION, (Attachment VIII). Representative Hackney reminded the committee of a bill passed in a previous session that created a new classification of property called divisible property so that one has not only marital property, and separate property, but also divisible property. He said that divisible property comes after a marriage dissolves, but should be divided as if it were marital property, such as interest on a bank account, income from rents, or debts that should be paid jointly. He said that this property was placed in category where a judge can deal with them separately. He said that a Court of Appeals decision, Hay v. Hay basically reversed the legislature's decision about divisible property. Representative Hackney said that this bill, together with one that was passed last session, would restore the divisible property law in North Carolina. He said that the bill allows that increases in net value caused by post separation payment of marital debt shall be treated as divisible property and credited to the spouse making the payment, regardless of whether the debt is paid by one spouse alone. He said that basically, one gets credit in the equitable distribution for a debt that is marital that he/she has paid after the separation. A copy of the bill analysis prepared by Ms. Barbara Riley, is attached, (Attachment IX).

Representative Daughtry asked for clarification of "divisible property."

Chairman Hackney said that divisible property is appreciation and diminution in value of marital property and, things that are 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, passive income from marital property, and increases and decreases in marital debt.

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

Chairman Hackney continued with an explanation of House Bill 950, AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT, (Attachment XI). During the April 10 meeting of the committee, the Chair extended an opportunity for interested parties to comment on the bill, but no committee action occurred. He said that the bill allows that if one is committed to a juvenile facility, the Department of Juvenile Justice and Delinquency Prevention must obtain the court's permission before moving the juvenile to another place.
A copy of the bill analysis is attached to the minutes, (Attachment XII).

Judge Beth Keever, Chief District Court Judge, Cumberland County, was recognized and commented on the bill. She said that once a judge, with information from the Department of Juvenile Justice, makes a decision that a juvenile should be sent to the youth academy training school, the burden should be on the Department of Juvenile

Justice to bring the issue back to the court rather than the burden being placed on the court to bring the Department back to court.

Mr. Hargrove was recognized and said that it is not the position of the Department of Juvenile Justice to second guess or try to change the committed status of a juvenile that a judge has committed. He said that the issue that the bill is related to deals with the kinds of programming that the facility could provide.

Chairman Hackney announced that the committee would meet again following the adjournment of the House session.

The meeting adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
THURSDAY, APRIL 24, 2003
10:00 AM AND 15 MINUTES AFTER SESSION

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 562 - CHARLOTTE PHOTO SPEED MEASURING SYSTEMS
REPRESENTATIVE ALEXANDER

HOUSE BILL 846 – ILLEGAL CHILD CARE FACILITIES
REPRESENTATIVE ALEXANDER

HOUSE BILL 877 – CLARIFY POSTSEPARATION SUPPORT LAWS
REPRESENTATIVE HACKNEY

HOUSE BILL 911 – NO PROFIT FROM CRIME
REPRESENTATIVE EDDINS

HOUSE BILL 950 – JUVENILE COMMITMENT TO DJJDP
REPRESENTATIVE HACKNEY

HOUSE BILL 951 – CREATE CIVIL NO-CONTACT PROTECTION ORDERS
REPRESENTATIVE HACKNEY

HOUSE BILL 1037 – AMEND JUVENILE LAW
REPRESENTATIVE LUEBKE

HOUSE BILL 1047 – ABOLISH ALIENATION OF AFFECTION/CRIM. CONV.
REPRESENTATIVE HACKNEY

HOUSE BILL 1125 – UNIFORM TERMS FOR JUDGES
REPRESENTATIVE HACKNEY

HOUSE BILL 1186 – SPEEDING BY LAW ENFORCEMENT OFFICERS
REPRESENTATIVE LUEBKE

HOUSE BILL 1219 – CLARIFY DEF. OF DIVISIBLE PROPERTY/EQUIT. DISTRIBUTION
REPRESENTATIVE HACKNEY

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 24, 2003 10:00 am meeting

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Royall	N.C. Family Policy Council
Donn Hargrove	DJJDP
Gary Dix	DJJDP
[illegible]	DOC
Julie Allen	NC Statewatch
Roz Smith	NCACC
Michelle Frazier	NC Bar Ass'n
Lynn P. Burleson	NC Bar Assn
Jill Schnabel	Tharrington Smith
Kendall C Byrd	Rep Kiser
Boyd Cauble	City of Charlotte

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 24, 2003 10:00 am meeting

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Pinsky	AAA Carolinas
Laura DeVivo	NCGA
John Mattox	GOV OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1037

Short Title:	Amend Juvenile Law.	(Public)
Sponsors:	Representatives Luebke; Crawford, Miller, and Michaux.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRIAL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-239 reads as rewritten:

"**§ 14-239. Allowing prisoners to escape; punishment.**

If any sheriff, deputy sheriff, ~~or~~ jailer, or other custodial personnel shall willfully or wantonly allow the escape of any person committed to ~~his~~ that person's custody who is (i) a person charged with a crime, ~~or~~ (ii) a person sentenced by the court upon conviction of any offense, or (iii) committed to the Department of Juvenile Justice and Delinquency Prevention, ~~he~~ that person shall be guilty of a Class 1 misdemeanor. No prosecution shall be brought against any such officer pursuant to this section by reason of a prisoner being allowed to participate pursuant to court order in any work release, work study, community service, or other lawful program, or by reason of any such prisoner failing to return from participation in any such program."

SECTION 2. G.S. 7B-2102 reads as rewritten:

"**§ 7B-2102. Fingerprinting and photographing juveniles.**

(a) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701, when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Department.

(a1) A youth development center or other juvenile facility or local confinement facility may photograph a juvenile who has been committed to the facility.

(b) If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints or photograph have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.

(c) A law enforcement ~~officer~~ officer, facility, or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.

(d) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200. Fingerprints and photographs taken pursuant to this section shall be maintained separately from any juvenile record, other than the electronic file maintained by the State Bureau of Investigation.

(d1) Notwithstanding subsection (d) of this section, photographs of a juvenile may be released to the public if the juvenile escapes from a youth development center or other juvenile facility, a holdover facility, or a local confinement facility or escapes from the custody of juvenile personnel or a local law enforcement officer.

(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

(1) The juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
(2) The court does not find probable cause pursuant to G.S. 7B-2202; or
(3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent."

SECTION 3. G.S. 7B-2204 reads as rewritten:

"**§ 7B-2204. Right to pretrial release; detention.**

Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify

the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility or an approved local confinement facility while awaiting trial. The court may order the juvenile to be held in a holdover facility at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention ~~facility.~~facility or approved local confinement facility.

Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal offense in superior court and receive an active sentence, then immediate transfer to the Department of Correction shall be ordered. Until such time as the juvenile is transferred to the Department of Correction, the juvenile may be detained in a holdover ~~facility.~~ facility or an approved local confinement facility. The juvenile may not be detained in a detention facility pending transfer to the Department of Correction.

The juvenile may be kept by the Department of Correction as a safekeeper until the juvenile is placed in an appropriate correctional program."

SECTION 4. G.S. 7B-2603(b) reads as rewritten:

"(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility or an approved local confinement facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention ~~facility.~~facility or an approved local confinement facility."

SECTION 5. G.S. 7B-1501 is amended by adding a new subdivision to read:

"(18b) Local confinement facility or approved local confinement facility. – A place in a local jail or other county facility which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required by G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population."

SECTION 6. Section 1 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2003.

ATTACHMENT IV

HOUSE BILL 1037:
Amend Juvenile Law

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Paul Luebke
Date:	April 24, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1037 would establish criminal penalties for allowing juveniles to escape, would allow juvenile detention facilities to photograph juveniles and to release those photographs when the juvenile escapes, and would allow the holding of a juvenile in a local confinement facility while awaiting trial as an adult.***

BILL ANALYSIS: **Section 1** of the bill provides for a Class 1 misdemeanor for willfully or wantonly allowing the escape of any person committed to that person's custody who is committed to the Department of Juvenile Justice and Delinquency Prevention.

Section 2 of the bill allows a youth development center or other juvenile facility or local confinement facility to photograph a juvenile who has been committed to the facility. This section also allows that facility to release that photograph to the public if the juvenile escapes from the facility or escapes from the custody of juvenile personnel or a local law enforcement officer.

Section 3 of the bill allows a juvenile that has been transferred to adult court to be held in a local confinement facility while awaiting trial.

Section 4 of the bill allows a juvenile that has been transferred to adult court to be held in a local confinement facility prior to pretrial release.

Section 5 of the bill defines the term "local confinement facility".

Section 1 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1037 DATE April 24, 2003

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

COMMITTEE SUBSTITUTE _____

(Rep.) Ross
Sen.)

moves to amend the bill on page 2, line 41
( ) WHICH CHANGES THE TITLE through page 3, line 31
by
by deleting those lines
and on page 1, lines 28-29
by deleting "or local confinement facility"
and on page 2, line 26
by ~~deleting~~ rewriting the line to read:
"other juvenile facility, or holdover facility or escapes"
and by renumbering the remaining sections accordingly

SIGNED _____

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. H1037 DATE April 24, 2003

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

COMMITTEE SUBSTITUTE _____

(Rep.) Capps
Sen.)

moves to amend the bill on page 3, line 27

( ) WHICH CHANGES THE TITLE

by inserting at the beginning of the line

"separate"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 1037. A BILL TO BE ENTITLED AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRAIL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

not reported out

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 1219

Short Title: Clarify Def. of Divisible Property/Equ. Dist. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO FURTHER CLARIFY THE DEFINITION OF DIVISIBLE PROPERTY UNDER THE LAWS RELATING TO EQUITABLE DISTRIBUTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(b)(4) reads as rewritten:

"...

(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~~ one spouse alone shall not be treated as divisible property. Increases in net value caused by postseparation payment of marital debt shall be treated as divisible property and credited to the spouse making the payment, regardless of whether the debt is paid by one spouse alone.

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.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases and decreases in marital debt and financing charges and interest related to marital debt."

SECTION 2. This act becomes effective October 1, 2003.

HB 1219:
Clarify Def. of Divisible Property/Equ. Dist.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 24, 2003	**Summary by:**	Barbara Riley
Version:	1st Edition		Committee Counsel

SUMMARY:

House Bill 1219 amends the definition of "divisible property" in G.S. 50-20(b)(4)(a) to provide that increases in the net value of marital property that result from post separation payment of marital debt are divisible property and should be credited to the spouse making the payment regardless of whether the payment is made by one spouse alone.

CURRENT LAW:

In 1997, the General Assembly created a new classification of property for equitable distribution purposes known as divisible property. This classification of property deals with changes in the value of the marital estate that occur between the date of separation and the date of distribution of the assets. Specifically divisible property includes.

a. Appreciation and depreciation in the value of marital and divisible property after separation, except when the increase or decrease is due to the post separation activity of a spouse.

b. Property and property rights received after separation that result from the efforts of either spouse during the marriage and before separation.

c. Passive income received after separation.

d. Increases or decreases in marital debt.

In *Hay v. Hay*, 198 N.C. App. 649 (2002), the Court of Appeals held that since the definition of divisible property did not include increases in the value of a marital asset that result from the action of one spouse, the post separation mortgage payments paid by the husband (in this case pursuant to court order to preserve the marital estate) would not create divisible property. The General Assembly responded to this decision by amending the definition of divisible property in 2002 to include decreases in marital debt as well as increases. S.L. 2002-159 § 33.5.

BILL ANALYSIS:

The definitional change in House Bill 1219 would further clarify that any increase in the net value of a marital asset resulting from the post separation payment of marital debt is divisible property and to be credited to the spouse making the payment regardless of whether the payment was made by one spouse alone.

The act is effective when it becomes law.

ATTACHMENT X

2003 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. 1219 A BILL TO BE ENTITLED AN ACT TO FURTHER CLARIFY THE DEFINITION OF DIVISIBLE PROPERTY UNDER THE LAWS RELATING TO EQUITABLE DISTRIBUTION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 950

Short Title:	Juvenile Commitment to DJJDP.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2513(e) reads as rewritten:

"(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution ~~or other program~~ of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile. The Department may assign a juvenile committed for delinquency to another program of the Department only if the court, upon motion of the Department, finds that the program is appropriate to the needs of the juvenile and orders the juvenile assigned to that program."

SECTION 2. This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

ATTACHMENT XII

HOUSE BILL 950:
Juvenile Commitment to DJJDP

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 10, 2003	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 950 would require the Department of Juvenile Justice and Delinquency Prevention to obtain a court order before placing a juvenile committed to a training school in an alternative program of the Department.***

BILL ANALYSIS: House Bill 950 would prohibit the Department of Juvenile Justice and Delinquency Prevention (Department) from assigning a juvenile committed for delinquency to a program, other than a youth development center, without a court order. The Department would be required to file a motion requesting the court to find that the program is appropriate to the needs of the juvenile.

The act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

House Judiciary I Committee

April 24, 2003
5:00 p.m. meeting

Minutes

The House Judiciary I Committee met on Thursday, April 24, 2003 at 5:00 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, Capps, Daughtry, Insko, Ross, Sexton and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Vice Chair Ross presided over the following bill.

Representative Hackney was recognized for an explanation of House Bill 1047, AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION, (Attachment III). He said that over forty states have abolished these torts, and that the historical antecedent is that women were property and the tort allowed recovery for injury to a husband for interference with his property and now vise versa. He said that the torts have been criticized as susceptible to abuse because of the disproportionate settlement value for unscrupulous plaintiffs. Representative Hackney added that these actions are very costly to defend in jury trials in superior court and many are brought as a strategy to try to gain advantage in alimony and equitable distribution actions. He said that wealthy people are the targets of such actions and that there is no good way to measure damages. He said that most believe that these torts do not work to achieve the intended purpose of putting families together and in fact does the opposite and most all legal commentators favor repeal of these torts. A copy of the bill analysis is attached, (Attachment IV).

Mr. Lynn Burleson, speaking on behalf of the Bar Association, was recognized and spoke in support of the bill.

Mr. Jerry Royal, North Carolina Family Policy Council, spoke in opposition to the bill.

Representative Hackney moved a favorable report.

Committee discussion followed with Representative Capps speaking in opposition to the bill.

Ms. Michelle Frazier, NC Bar Association, was recognized and spoke briefly regarding the procedure the association follows in determining support for legislation.

Upon vote of the committee, the bill received a favorable report, (Attachment V).

Chairman Hackney resumed the chair.

Representative Alexander was recognized for a continuation of the discussion of House Bill 562, AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS, (Attachment VI). The bill was previously discussed during the April 1, 22 and 23 meetings of the committee. Toward the close of the April 23 meeting, Representative Ross offered an amendment, but action was not taken on it before adjournment of the meeting.

Representative Ross was recognized and withdrew the amendment that was offered during the April 23 meeting. She offered a substitute amendment, (Attachment VII).

Representative Daughtry objected to bringing up the bill during this meeting due to the fact that it had been discussed at several previous meetings, and because several members were not present. He also noted that the committee had several other bills pending on the calendar that should be discussed instead.

Representative Ross was recognized to explain the amendment. She said that the amendment changes how the proceeds of any money that comes in from the photo speed system would be used to insure that the funds would go to the schools and that the amendment is based on the model that is used in Wake County and the City of Concord.

Representative Capps asked if she would be willing for the amendment to state that the funds could be used only for safety measures in the schools.

Representative Ross would not agree for the language to be written in that way because she said that the School Boards Association did not want it that way, and that Charlotte had agreed to the amendment.

Representative Sexton was recognized and spoke in opposition to consideration of the bill at this meeting.

Upon vote of the committee, the amendment was adopted.

Representative Capps spoke in support of the bill saying that speeding is a problem and that the City of Charlotte should be allowed to operate the program on a trial

basis. He moved a favorable report for a committee substitute incorporating the amendment.

Representative Daughtry moved to re-calendar the bill for Monday afternoon noting that a vote should not be taken with several members absent. Upon vote of the committee, there was a tie vote. The Chairman voted against the motion and the motion failed.

In his absence, Representative Ross offered a second amendment that had been requested by Representative Harrell, (Attachment VIII).

Ms. Susan Sitze, Committee Counsel, was recognized to explain the amendment. She said that the amendment would require that the citation that is issued be written in both English and Spanish, and that the citation contain both a street address within the municipality and a local or toll free number at which the owner may challenge the citation. The amendment also requires that the administrative hearing process include methods for challenging the violation or penalty in person either at the street address or through the telephone. The amendment requires that a Spanish-speaking person is available both at the physical location and through the phone line

Representative Alexander expressed no opposition to the amendment.

The amendment was adopted.

Representative Capps moved to incorporate the two amendments 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 IX). A copy of the committee substitute is attached, (Attachment X).

Vice Chair Ross assumed the chair.

Chairman Hackney was recognized for an explanation of House Bill 951, AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT, (Attachment XI).

Ms. Erika Churchill, Committee Counsel, was recognized to explain the bill. She said that the bill would create a new chapter (50-C) that would allow one who is a victim of sexual assault to seek a civil no-contact order against the perpetrator of the assault. The chapter would set forth the procedures in which this could occur and would allow for an emergency order that would be approximately two years in length.

Representative Hackney said that a recurring problem has been the stalking situation and how to keep contact from happening between the person who has been harassing another and the victim. He said that this is another legislative attempt to try to address the problem. He said that a victim would file a civil action by petition, and allege

the conduct that entitles the order and then the rules of civil procedure would apply. The bill analysis outlines the provisions, (Attachment XII).

Ms. Joanne Stevens, representing North Carolina Coalition Against Sexual Assault, spoke in support of the bill.

Following committee discussion, the sponsor requested that the bill be held over until the April 28 meeting of the committee.

Chairman Hackney resumed the chair.

Representative Alexander was recognized to explain House Bill 846, AN ACT TO MAKE IT A FELONY TO KNOWINGLY OPERATE A CHILD CARE FACILITY ILLEGALLY, (Attachment XIII). A proposed committee substitute was distributed, (Attachment XIV), and Representative Alexander moved its adoption for the purpose of discussion. The motion carried. The committee substitute would strengthen the penalties for violations of the Child Care Facilities Act. The bill would amend the Act to clarify that all child care facilities must obtain and display a license. A bill analysis prepared by Ms. Susan Sitze, Committee Counsel, is attached, (Attachment XV)

Ms. Peggy Ball, Division of Child Development, Department of Health and Human Services, was recognized to comment on the bill.

Representative Ross noted concern regarding the provision dealing with child care that is provided for more than two children, for more than four hours per day on two consecutive days.

Ms. Ball said that there are many situations of this type that are exempted such as caring for relatives, caring for children at Bible school or the local health club, Mother's Morning Out, etc. She said that such situations are not, by definition, child care facilities.

Representative Capps spoke in opposition to the bill.

Representative Insko requested a clarification of the definition of "child care provider."

Ms. Ball responded that a child care provider would be one that is caring for more than two children who are less than 13 years old, unrelated and do not reside in the home and receive care on a regular basis for least once a week for more than four hours a day, but less than 24 hours.

Representative Ross said that she did not have a problem with enhancing the penalties for violations when, as a result of the violation one is causing a serious injury to a child. She said that she did have a problem raising the penalty for a simple violation to a felony.

Ms. Roz Savitt, representing the North Carolina Child Care Coalition, was recognized. She spoke in support of the penalties set forth in the bill. She said that the purpose of the bill is to try to prevent tragedies to children by getting to those who are willfully breaking the law. She said that many of these people do not want to become licensed because some of them will not be able to pass the criminal records check requirement

No action was taken on the bill.

Chairman Hackney reminded the members that the committee would meet again at 4:00 p.m. on Monday.

The meeting adjourned at 6:00 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
THURSDAY, APRIL 24, 2003
10:00 AM AND 15 MINUTES AFTER SESSION

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 562 - CHARLOTTE PHOTO SPEED MEASURING SYSTEMS
REPRESENTATIVE ALEXANDER

HOUSE BILL 846 – ILLEGAL CHILD CARE FACILITIES
REPRESENTATIVE ALEXANDER

HOUSE BILL 877 – CLARIFY POSTSEPARATION SUPPORT LAWS
REPRESENTATIVE HACKNEY

HOUSE BILL 911 – NO PROFIT FROM CRIME
REPRESENTATIVE EDDINS

HOUSE BILL 950 – JUVENILE COMMITMENT TO DJJDP
REPRESENTATIVE HACKNEY

HOUSE BILL 951 – CREATE CIVIL NO-CONTACT PROTECTION ORDERS
REPRESENTATIVE HACKNEY

HOUSE BILL 1037 – AMEND JUVENILE LAW
REPRESENTATIVE LUEBKE

HOUSE BILL 1047 – ABOLISH ALIENATION OF AFFECTION/CRIM. CONV.
REPRESENTATIVE HACKNEY

HOUSE BILL 1125 – UNIFORM TERMS FOR JUDGES
REPRESENTATIVE HACKNEY

HOUSE BILL 1186 – SPEEDING BY LAW ENFORCEMENT OFFICERS
REPRESENTATIVE LUEBKE

HOUSE BILL 1219 – CLARIFY DEF. OF DIVISIBLE PROPERTY/EQUIT. DISTRIBUTION
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 24, 2003 afternoon meeting

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Boyd Gamble	City of Charlotte
Michelle Frazier	NC Bar Ass'n
Lynn Butlesan	Tharrington Smith
John Phelps	NCLM
John McKay	Gen Assembly
Joanne Stevens	NCCASA
Jane Royall	NCFPC
Kim Bell	DPD-DHHS
John Rust	NCFPC
Gail Young	ACLU
Rob Harvey	DHHS

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 24, 2003 afternoon meeting

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Dirtens	Charlotte Observer

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 1047

Short Title:	Abolish Alienation of Affection/Crim. Conv.	(Public)
Sponsors:	Representatives Hackney; and Insko.	
Referred to:	Judiciary I.	

April 10, 2003

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 1047:
Abolish Alienation of Affection/Crim. Conv.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney
Date:	April 24, 2003	**Summary by:**	Susan L. Sitze
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1047 abolishes the common law torts of alienation of affection and criminal conversation.***

CURRENT LAW: The common law of North Carolina recognizes the civil action of alienation of affection. 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 affection, 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 affection. 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 1047 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.

2003 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. 1047 A BILL TO BE ENTITLED AN ACT TO ABOLISH THE CIVIL ACTIONS OF ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 562

Short Title:	Charlotte Photo Speed Measuring Systems.	(Public)
Sponsors:	Representatives Alexander, Rhodes (Primary Sponsors); Cunningham and Earle.	
Referred to:	Judiciary I.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.2. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.2(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 562

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

H562-ASA-10 [v.2]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
H562-CSSA-9[v.1]

Representative Ross

moves to amend the bill on page 3, lines 1-3
by rewriting those lines to read:

"(5) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the photographic speed-measuring system; paying for operation of the system, either by the municipality or by a contractor; paying for a program to provide public awareness of the system; and paying any administrative costs incurred by the municipality related to the use of the system."'

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 562

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

H562-ASA-11 [v.1]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
H562-CSSA-9[v.1]

Representative ~~Harrell~~ Russ

moves to amend the bill on page 2, lines 27-28
by rewriting the lines to read:

"(3) The owner of the vehicle shall be issued a citation, written in both English and Spanish, clearly stating the manner in which the violation may be challenged and containing both a street address within the municipality and a local or toll-free telephone number at which the owner may challenge the citation. The citation shall be"

and on page 2, line 40
by rewriting the line to read:

"under this section. The administrative hearing process shall include methods for challenging the violation or penalty either in person, at the street address provided on the citation, or through the telephone, at the telephone number provided on the citation. The municipality shall ensure that a Spanish speaking person is available both at the street address and through the telephone number to assist Spanish speaking persons. An administrative hearing decision shall be subject"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT IX

2003 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. 562 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING 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 the committee substitute bill ~~(#), ☐ which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 562
PROPOSED COMMITTEE SUBSTITUTE H562-PCS45100-SA-12

Short Title: Charlotte Photo Speed Measuring Systems. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO USE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS DURING A THREE-YEAR PILOT PROGRAM IN DESIGNATED CORRIDORS; TO AUTHORIZE THE CITY OF CHARLOTTE TO ESTABLISH CIVIL PENALTIES FOR SPEED LIMIT AND SCHOOL ZONE SPEED LIMIT VIOLATIONS; AND TO AUTHORIZE THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SECRETARY OF CRIME CONTROL AND PUBLIC SAFETY TO APPROVE STANDARDS FOR THE PHOTOGRAPHIC SPEED-MEASURING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.4. Use of photographic speed-measuring systems.**

(a) A photographic speed-measuring system is a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating a speed limit or speed restriction.

(b) A photographic speed-measuring system shall be approved, calibrated, and tested for accuracy in accordance with G.S. 8-50.3.

(c) A photographic speed-measuring system shall be monitored by a sworn law enforcement officer at all times that the system is actively in use.

(d) Any photographic speed-measuring system installed or in use on a street or highway shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of a photographic speed-measuring system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.

(e) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141 and G.S. 20-141.1 by means of a photographic speed-measuring system. Notwithstanding the provisions of G.S. 20-141, 20-141.1, and 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-141 or G.S. 20-141.1 detected by a photographic speed-measuring system shall not be an infraction or misdemeanor. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle furnishes, within 21 days of notification of the violation, to the officials or agents of the municipality that issued the citation either of the following:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time of the violation, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a photographic speed-measuring system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) or G.S. 58-36-65 shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation, written in both English and Spanish, clearly stating the manner in which the violation may be challenged and containing both a street address within the municipality and a local or toll-free telephone number at which the owner may challenge the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation and shall be subject to an additional penalty not to exceed fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may recover the penalties by civil action in the nature of debt.

(4) The municipality shall provide a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed under this section. The administrative hearing process shall include methods for challenging the violation or penalty either in person, at the

street address provided on the citation, or through the telephone, at the telephone number provided on the citation. The municipality shall ensure that a Spanish speaking person is available both at the street address and through the telephone number to assist Spanish speaking persons. An administrative hearing decision shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the administrative hearing decision.

(5) The clear proceeds from the citations issued pursuant to the ordinance authorized by this section shall be paid to the county school fund. The clear proceeds from the citations shall mean the funds remaining after paying for the lease, lease-purchase, or purchase of the photographic speed-measuring system; paying for operation of the system, either by the municipality or by a contractor; paying for a program to provide public awareness of the system; and paying any administrative costs incurred by the municipality related to the use of the system."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-50.3. Results of photographic speed-measuring instruments; admissibility.**

(a) The results of the use of a photographic speed-measuring system as described in G.S. 160A-300.4 shall be admissible as evidence in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4) for the purpose of establishing the speed of the vehicle detected.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a photographic speed-measuring system are not admissible unless all of the following are established:

(1) The photographic speed-measuring system employed was approved for use by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(2) The photographic speed-measuring system had been calibrated and tested for accuracy in accordance with the standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety for that particular system.

(3) At the time the results were obtained, the photographic speed-measuring system was being monitored by a sworn law enforcement officer.

(c) All photographic speed-measuring systems shall be calibrated and tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety. A written certificate by a technician certified by the North Carolina Criminal Justice Education and Training Standards Commission showing that a test was made within the required testing period and that the system was accurate shall be competent

and prima facie evidence of those facts in a nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4).

(d) In every nonjudicial administrative hearing held pursuant to G.S. 160A-300.4(e)(4), where the results of a photographic speed-measuring system are sought to be admitted, notice shall be taken of the rules approving the photographic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(13a) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of photographic speed-measuring systems as described in G.S. 160A-300.4(a) and establish the standards for calibration and testing for accuracy of each approved system."

SECTION 4. Section 1 of this act applies to the City of Charlotte only and the photographic speed-measuring systems may only be used in the following corridors:

(1) South Boulevard between Interstate 485 and Scaleybark.
(2) Independence between Briarcreek and Sardis Road North.
(3) East W.T. Harris between The Plaza and Idlewild.
(4) Tryon Street from 36th to Orr Road.
(5) Tryon Street from Mallard Creek Church Road and University City Boulevard.
(6) Eastway between Independence and Sugar Creek.
(7) West W.T. Harris between North Tryon Street and Technology Drive.
(8) Albemarle Road between Independence and Lawyers.
(9) Central between Albemarle and Briar Creek.
(10) Monroe Road between Sardis Road North and Wendover.
(11) Providence between McKee and Providence Country Club.
(12) Highway 51 between Park Road and Alexander Road.
(13) Sharon Amity between Lyttleton Drive and East W.T. Harris.
(14) Billy Graham Parkway between Interstate 85 and Woodlawn.

SECTION 5. This act becomes effective July 1, 2003, and expires June 30, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 951

Short Title: Create Civil No-Contact Protective Orders. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Purpose.**

Victims of sexual assault desire safety and protection from future interactions with their offenders, and it is the purpose of this Chapter that when the crime of sexual assault is committed against another, the victim should be able to seek a simple civil remedy requiring that the offender be prohibited from having any contact with the victim.

"**§ 50C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – An emergency or plenary order granted under this Chapter, which includes a remedy authorized by G.S. 50C-13.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching or fondling by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"**§ 50C-4. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil court by any of the following:

(1) A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration.

(2) A person on behalf of a minor child or an adult who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, but because of age, disability, health, or inaccessibility cannot file the petition.

"**§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil court, unless specific courts are designated by local rule or order.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-6. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit and shall allege that the petitioner is or has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

(a) Any proceeding to obtain, modify, reopen, or appeal a civil no-contact order shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes. The standard of proof in a civil no-contact order proceeding is proof by a preponderance of the evidence.

(b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed to accompany and confer with the victim, unless otherwise directed by the court. Court administrators shall allow rape crisis advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized practice of law when providing assistance pursuant to this subsection.

"**§ 50C-8. Venue.**

A petition for a civil no-contact order may be filed in any of the following:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the alleged nonconsensual sexual conduct or nonconsensual sexual penetration occurred.

"**§ 50C-9. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within seven days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a plenary civil no-contact order by default for the remedy sought in the petition if the respondent has been served or given notice in accordance with subsection (a) of this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-10. Hearings.**

A petition for a civil no-contact order shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of the petition. Nothing in this section shall prevent the court from reserving issues if jurisdiction or notice requirements are not met.

"**§ 50C-11. Continuance.**

(a) Petitions for emergency remedies shall be granted or denied in accordance with the standards of G.S. 50C-14, regardless of the respondent's appearance or presence in court.

(b) Any action for a civil no-contact order is an expedited proceeding. Continuances shall be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance.

"**§ 50C-12. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the petitioner is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent regarding the issue of whether the petitioner consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place, or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant, and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the petitioner may be examined or cross-examined.

"**§ 50C-13. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-14 for emergency orders or G.S. 50C-15 for plenary orders. The petitioner shall not be denied a civil no-contact order because the petitioner or the respondent is a minor. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim. Modification or extension of prior civil no-contact orders shall be in accordance with this Chapter.

(b) A civil no-contact order shall order the respondent to stay away from the petitioner or any other person protected by the civil no-contact order or prohibit the respondent from entering or remaining present at the petitioner's school, place of employment, or other specified places at times when the petitioner is present, or both, if reasonable. Hardships or inconvenience to the respondent need not be balanced for the court to enter a civil no-contact order or prohibit the respondent from entering premises where the respondent has no right of entry.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.
(2) The respondent was voluntarily intoxicated.
(3) The petitioner acted in self-defense or defense of another.
(4) The petitioner did not act in self-defense or defense of another.
(5) The petitioner left the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.
(6) The petitioner did not leave the residence or household to avoid further nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(d) Monetary damages are not recoverable as a remedy.

"**§ 50C-14. Emergency civil no-contact order; court holidays and evenings.**

(a) A court may issue an emergency civil no-contact order if the petitioner satisfies the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.
(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for an emergency order, the respondent may elect to file a general appearance and testify. Any resulting order may be an emergency order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-15 have been met, the court may issue a plenary order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day emergency order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue an emergency civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise an emergency civil no-contact order at all times, whether or not the court is in session.

(e) Any order issued under this section and any documentation in support of the order shall be certified on the next court day to the appropriate court. The clerk of that court shall immediately assign a case number to and file the petition, order, and any other documents with the court, enter the order of record, and file it with the sheriff for service in accordance with G.S. 50C-9. Filing the petition shall commence proceedings for further relief under G.S. 50C-5. Failure to comply with the requirements of this subsection does not affect the validity of the order.

"**§ 50C-15. Plenary civil no-contact order.**

A plenary civil no-contact order shall issue if the petitioner has served notice of the hearing for the plenary civil no-contact order on the respondent in accordance with G.S. 50C-9 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-9.

(3) The respondent has answered or is in default.

"**§ 50C-16. Duration; extension of orders.**

(a) Unless reopened or extended or voided by entry of an order of greater duration, an emergency civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a plenary civil no-contact order shall be effective for a fixed period of time, not to exceed two years. A plenary civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment or for a fixed period of time not exceeding two years.

(c) Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of subsection (c) of G.S. 50C-14, which applies only when the court is unavailable at the close of business or on a court holiday.

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

(e) Nothing in this Chapter shall be construed to encourage the practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a civil no-contact order.

"**§ 50C-17. Contents of orders.**

(a) All civil no-contact orders shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(b) A civil no-contact order shall further state the following:

(1) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by

the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is an emergency or plenary order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in an emergency civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1 misdemeanor. Any second or subsequent violation is a Class H felony.'

"**§ 50C-18. Notice of orders.**

(a) Upon issuance of any civil no-contact order, the clerk of the court issuing the order shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of G.S. 50C-14, do the following:

(1) Enter the order on the record and file it in accordance with the district court procedures.

(2) Provide a filed stamped copy of the order to the respondent, if present, and to the petitioner.

(b) The clerk of the issuing judge shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent. If the order was issued in accordance with subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement personnel charged with maintaining criminal records.

(c) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order or short form notification.

(d) If the person against whom the civil no-contact order is issued is arrested and the written order is issued in accordance with subsection (c) of G.S. 50C-14 and received by the custodial law enforcement agency before the respondent or offender is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or offender before the respondent or offender is released from custody. In no event shall detention of the respondent or offender be extended for hearing on the petition for civil no-contact order or receipt of the order issued under G.S. 50C-14.

(e) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

(f) Upon the request of the petitioner, within 24 hours of the issuance of a civil no-contact order, the clerk of the issuing judge shall send written notice of the order along with a certified copy of the order to any school, college, or university at which the petitioner is enrolled.

"**§ 50C-19. Violation.**

A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A second or subsequent violation is a Class H felony.

"**§ 50C-20. Arrest without warrant.**

(a) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-21. Data maintenance by law enforcement agencies.**

(a) All local sheriff's departments shall furnish to the local police departments, on the same day as received, in the form and detail the police department requires, copies of any recorded emergency or plenary civil no-contact orders issued by the court and transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data system on the same day it is issued by the court. If an emergency civil no-contact order was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered in the police department's data system as soon as possible after receipt from the clerk of the court.

(b) Each local police department shall maintain a complete and systematic record and index of all valid and recorded civil no-contact orders issued under this Chapter. The recorded civil no-contact orders issued under this Chapter shall be used to inform all dispatchers and law enforcement personnel at the scene of an alleged incident of nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or nonconsensual sexual penetration involving the victim, and the effective dates and terms of any recorded civil no-contact order."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under Chapter 50C of the General Statutes, as enacted in Section 1 of this act, on or after that date.

HOUSE BILL 951:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 23, 2003	**Summary by:**	R. Erika Churchill*
Version:	First Edition		Committee Co-Counsel

SUMMARY: The bill would allow the courts to issue protective orders, like domestic violence orders under Chapter 50B, in situations where a person has been a victim of nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as a crime.

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: Senate Bill 916 creates a new Chapter 50C entitled "Civil No-Contact Orders". The bill establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where non-consensual sexual conduct has occurred.

G.S. 50C-3 sets out applicable definitions for the Chapter, including definitions of "nonconsensual", "sexual conduct" and "sexual penetration".

G.S. 50C-4 permits a petition for a civil no-contact order to be filed by a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, or on behalf of another person who is such a victim.

G.S. 50C-5 sets out the procedures for initiating an action. Actions are started by the filing of a petition, with no filing fee or sheriff's service fee.

G.S. 50C-6 requires that the petition be accompanied by an affidavit alleging that the petitioner has been a victim under this law.

G.S. 50C-7 applies the Rules of Civil Procedure to proceedings under this law and requires findings by the court of proof by a preponderance of the evidence. Rape crisis advocates are permitted to assist in the petition process and as such shall not be considered to be unlawfully practicing law.

G.S. 50C-8 allows actions to be brought where either the petitioner or the respondent reside or where the nonconsensual sexual act occurred.

G.S. 50C-9 sets out the service of process that applies in these proceedings.

G.S. 50C-10 allows proceedings under this law to be handled as expedited proceedings.

G.S. 50C-12 allows testimony of the petitioner's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-13 requires the court to issue a no-contact order where it is found that the petition is a victim of nonconsensual sexual acts. The order shall require the respondent to stay away from the petitioner including prohibitions against entering the petitioner's school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy shall not be based on the

fact that the respondent was justified in using force or was intoxicated, and not based on the petitioner acting or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-14 sets out a procedure for the issuance of emergency orders.

G.S. 50C-16 limits emergency orders to a minimum of 14 days and a maximum of 21 days. Plenary orders may last for a period of up to two years and may be renewed.

G.S. 50C-17 sets out the requirement for the contents of the order, including notice that violation of the order is punishable as a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-18 sets out a process of filing notices of the orders with law enforcement and service of orders on the respondent.

G.S. 50C-19 makes a violation of a no-contact order a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-20 authorizes an officer to arrest without a warrant for a violation of an order.

G.S. 50C-21 requires law enforcement to maintain a database of all outstanding no-contact orders.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to acts committed on or after that date.

*O. Walker Reagan substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 846*

Short Title: Illegal Child Care Facilities. (Public)

Sponsors: Representatives Alexander; Insko, Jeffus, and McLawhorn.

Referred to: Judiciary I.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO KNOWINGLY OPERATE A CHILD CARE FACILITY ILLEGALLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

~~Any person who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 1 misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~

(a) Any person who operates a child care facility as defined in G.S. 110-86(3) and who provides child care in knowing and willful violation of the provisions of this Article is guilty of a Class I felony.

(b) Any person who operates a child care facility as defined in G.S. 110-86(3) and knowingly and willfully provides child care for more than two children for more than four hours per day on two or more consecutive days is guilty of a Class I felony.

(c) A violation of subsection (a) or (b) of this section that results in the creation of an unreasonable risk of harm to a child attending the child care facility shall be punished as a Class H felony.

(d) A violation of subsection (a) or (b) of this section that results in serious injury to a child attending the child care facility shall be punished as a Class H felony.

(e) Any person who violates this section after being found guilty of a prior violation of subsection (a) or (b) of this section shall be guilty of a Class H felony.

(f) This section shall not apply to any person who, within 24 hours of notification that the person has violated the provisions of this Article, complies with all applicable laws and rules and where there is no evidence that a child has been harmed as a result of the violation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 846*
PROPOSED COMMITTEE SUBSTITUTE H846-CSSA-10 [v.1]

4/23/2003 6:17:50 PM

Short Title: Illegal Child Care Facilities. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 ~~through G.S. 110-99 or G.S. 110-102~~ shall be guilty of a Class 1 ~~misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~ misdemeanor. Violations of G.S. 110-98(2), 110-99(b), 110-99(c), and 110-102 are exempted from the provisions of this subsection.

(b) Any person who operates a child care facility and who:

(1) Willfully violates the provisions of G.S. 110-99(a), or

(2) Willfully violates the provisions of this Article while providing child care for more than two children, for more than four hours per day on two consecutive days, is guilty of a Class I felony.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, is guilty of a Class H felony.

(d) Any person who violates subsection (a) of this section, and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony."

SECTION 2. G.S. 110-99 reads as rewritten:

"**§ 110-99. ~~Display~~ Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license authorized for issuance under G.S. 110-88.

~~(a)~~(b) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe

any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

~~(b)~~(c) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall notify the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 846:
Illegal Child Care Facilities

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Martha Alexander
Date:	April 24, 2003	**Summary by:**	Susan L. Sitze*
Version:	H846-CSSA-10[v.1]		Committee Counsel

SUMMARY: ***The PCS for House Bill 846 would enhance penalties for violations of the Child Care Facilities Act. The Act would be amended to clarify that all child care facilities must obtain and display a license.***

BILL ANALYSIS:

Section 1 of the bill provides that:

- Violations by child care facilities, except for the noted exclusions, remain as Class 1 misdemeanors. Violations by family child care homes would also become Class 1 misdemeanors (currently Class 3).
- Persons who operate without a license, in willful violation of the Act's requirement to have a license, would be subject to conviction as a Class I felon.
- Persons who provide child care to more than two children, for more than four hours a day on two consecutive days, and who willfully violate the Act's provisions, would be subject to conviction as a Class I felon.
- A person who violates the Act and, as a result, causes serious injury to a child attending the child care facility, would be subject to conviction as a Class H felon.
- A person who violates the Act, and has a prior misdemeanor conviction for violating the Act, would be subject to conviction as a Class H felon.

Section 2: Clarifies that it is unlawful to operate a child care facility without a license. The current statute refers to the statute which provides for the application process.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

**Staff Attorney H. Alan Pell contributed substantially to this summary*

House Judiciary I Committee

April 28, 2003

Minutes

The House Judiciary I Committee met on Monday, April 28, 2003 at 4:00 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, Capps, Daughtry, Harrell, Insko, Ross and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney stated that the first order of business would be to revisit House Bill 1037, AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRIAL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES. The committee had voted to give the bill a favorable report as to a committee substitute during its 10:00 a.m. meeting on April 24. He said that the sponsor and interested parties had come to an understanding that the language regarding confinement facilities should be removed. He said that he would entertain a motion from someone who voted on the prevailing side to reconsider the vote by which House Bill 1037 received a favorable report.

Representative Ross was recognized to comment. She reminded the committee that there was a provision in the bill that allowed 13, 14 and 15-year olds who have been bound over to Superior Court for felonies to be held in an adult jail with sight and sound restrictions awaiting trial. She said that she had offered an amendment to remove that provision and the amendment had failed for lack of a majority. She noted that the sponsors no longer wanted that provision to be a part of the bill and would like for it to be reconsidered.

Representative Capps noted that everyone had voted for the bill and that he saw no reason for reconsideration of the bill.

Chairman Hackney stated that the request had come from the sponsors of the bill and that the bill as passed by the committee would bring about a major change in the law. He said that he was reluctant to go forward with the bill in its current form.

The bill was displaced.

The committee turned its attention to House Bill 950, AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT, (Attachment III). The bill had been explained during the April 24 morning meeting of the committee. A proposed committee substitute was distributed, (Attachment IV), and Representative Insko moved adoption for the purpose of discussion. The motion carried.

Ms. Susan Sitze, Committee Counsel, was recognized to explain the committee substitute. She said that she understood that both the Department of Juvenile Justice and Delinquency Prevention and the district court judges had agreed to the committee substitute. The bill would require that if the department has a committed juvenile, who after assessment is determined to need services or a program that is not located within a youth development center, they may file a motion with the committing court, along with information identifying and provide information on the program to which they want to place the juvenile. The court, upon receiving that motion, may choose to either issue an order without holding a hearing or hearing witnesses, if the court feels it is an appropriate placement, or the court may decide to have a hearing to determine whether or not they wish that placement to be deemed appropriate. The department, when it files a motion, must notify the district attorney, the juvenile and the juvenile's attorney. If the juvenile or the juvenile's attorney request a hearing, a hearing automatically will be held. A copy of the bill analysis is attached, (Attachment V).

Vice Chair Ross was asked to preside during the discussion of the bill.

Representative Hackney offered a technical amendment, (Attachment VI), that adds the words "or a detention facility" each time "youth development center" is used. He moved adoption of the amendment. The amendment was adopted.

Representative Hackney moved a favorable report for a new committee substitute incorporating the amendment, and an unfavorable report for the original bill. The motion carried, (Attachment VII). A copy of the new committee substitute is attached, (Attachment VIII).

Representative Hackney was recognized to continue discussion of House Bill 951, AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT, (Attachment IX). A copy of the bill analysis is attached, (Attachment X). The bill was explained during the April 24 afternoon meeting of the committee. A new proposed committee substitute was distributed, (Attachment XI). Representative Insko moved adoption for the purpose of discussion. The motion carried. The bill analysis for the committee substitute is attached to the minutes, (Attachment XII).

Ms. Sitze was recognized to explain changes made in the committee substitute. She said that the committee substitute was essentially the Senate version that is pending, with the workplace portion taken out. She said that the bill would allow a civil no-contact order for acts of sexual conduct. She said that the order is somewhat similar to a

50-B domestic violence order except that in this case one must not have a domestic relationship. It would allow for filing of a petition by either a victim or someone representing the victim.

Discussion followed regarding the definition of unlawful conduct. Representative Daughtry stated that he thought the definition was too wide.

Representative Ross requested clarification regarding the definition of sexual conduct in the bill and the criminal definition of what a sexual act is.

Representative Hackney raised the issue of service of process and enforcement of orders.

Ms. Monika Johnson Hostler, North Carolina Coalition Against Sexual Assault responded to questions.

Following extensive committee discussion, Representative Hackney requested that a new committee substitute be drafted to address concerns that had been raised.

Representative Hackney was recognized for an explanation of House Bill 1125, AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE UNIFORM TERMS FOR ALL JUDGES OF THE GENERAL COURT OF JUSTICE BY PROVIDING EIGHT-YEAR TERMS FOR DISTRICT COURT JUDGES, (Attachment XIII). He said that District Judges have four-year terms and other judges have eight-year terms and that the bill provides for the voters to decide whether there shall be eight-year terms for District Court Judges as well as for Superior Court, Court of Appeals and Supreme Court judges and justices. He said that if the bill passes, the judges elected in the 2004 general election would be the first affected and the election, itself, would be at the next statewide election. He said that the number of elections a career judge would have to run in would be cut in half and takes half of the fund-raising issue out of the system. A bill analysis is attached, (Attachment XIV).

Representative Daughtry stated that a District Court judge tends to be the entry-level into the judiciary system. He noted that the majority of Superior Court judges have been in the judiciary before becoming Superior Court judges. With regard to District Court judges, he said that the public has no experience on which to determine how good an entry-level judge is going to be. He said that an eight-year term is a long time for one to serve if that judge is not a good judge. He further said that if the election process is to be used for judges, an eight-year term is too long, but an appointment process would be different and an eight-year term could be a possibility.

Representative Hackney asked Representative Daughtry if he would be more comfortable with making the first term a four-year term, and then allow for an eight-year subsequent term. Representative Daughtry replied that he would be happier with provision.

No action was taken on the bill.

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
MONDAY, APRIL 28, 2003
4:00 PM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 846 – ILLEGAL CHILD CARE FACILITIES
REPRESENTATIVE ALEXANDER

HOUSE BILL 877 – CLARIFY POSTSEPARATION SUPPORT LAWS
REPRESENTATIVE HACKNEY

HOUSE BILL 911 – NO PROFIT FROM CRIME
REPRESENTATIVE EDDINS

HOUSE BILL 950 – JUVENILE COMMITMENT TO DJJDP
REPRESENTATIVE HACKNEY

HOUSE BILL 951 – CREATE CIVIL NO-CONTACT PROTECTION ORDERS
REPRESENTATIVE HACKNEY

HOUSE BILL 1125 – UNIFORM TERMS FOR JUDGES
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 28, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Ass'n
Jon Kurtz	NC Bar Ass'n
Paula A. Wolf	Covenant w/NC's Children
Martin Pharr	NC Dept. Juvenile Justice & Delinq. Prevention
Larry Dix	DJJDP
Anne Wilson	
Roz Sandt	NCCCA
Colleen Kochanek	Hafer & Caldwell, P.A.
Monika Johnson Hostler	NCCASA
Joanne Stevens	NCCASA
Porter	Smith Anderson

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 28, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCBA
Tony Hoelscher	Fund Balance
Amy Dixon	NC Statewatch

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 950

Short Title: Juvenile Commitment to DJJDP. (Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2513(e) reads as rewritten:

"(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution ~~or other program~~ of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile. The Department may assign a juvenile committed for delinquency to another program of the Department only if the court, upon motion of the Department, finds that the program is appropriate to the needs of the juvenile and orders the juvenile assigned to that program."

SECTION 2. This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 950
PROPOSED COMMITTEE SUBSTITUTE H950-CSSA-13 [v.4]

4/28/2003 3:21:58 PM

Short Title: Juvenile Commitment to DJJDP. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN THE APPROVAL OF THE COURT BEFORE PLACING A JUVENILE COMMITTED TO THE DEPARTMENT IN A PROGRAM NOT LOCATED IN A YOUTH DEVELOPMENT CENTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2513(e) reads as rewritten:

"(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution ~~or other program~~ of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile.

The Department, after assessment of the juvenile, may provide commitment services to the juvenile in a program not located in a youth development center. If the Department recommends that commitment services for the juvenile are to be provided in a setting that is not located in a youth development center, the Department shall file a motion, along with information about the recommended services for the juvenile, with the committing court prior to placing the juvenile in the identified commitment program. The Department shall send notice of the motion to the District Attorney, the juvenile and the juvenile's attorney. Upon receipt of the motion filed by the Department, the court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the date for that hearing shall be set by the court and the

Department shall place the juvenile in a youth development center until the determination of the court at that hearing."

SECTION 2. This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

HOUSE BILL 950:
Juvenile Commitment to DJJDP

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Joe Hackney
Date:	April 28, 2003	**Summary by:**	Susan L. Sitze
Version:	H950-CSSA-13[v.4]		Committee Counsel

SUMMARY: ***The PCS for House Bill 950 would require the Department of Juvenile Justice and Delinquency Prevention to notify the committing court before placing a juvenile committed to a youth development center in an alternative off-campus program.***

BILL ANALYSIS: The PCS for House Bill 950 would amend G.S. 7B-2513(e) to allow the Department of Juvenile Justice and Delinquency Prevention (Department) to place a juvenile committed to the Department in a program not located in a youth development center. If the Department recommends placement in a program not located in a youth development center, the Department must file a motion with the committing court, along with information on the specific placement recommended. The Department must also notify the District Attorney, the juvenile and the juvenile's attorney of the motion. The court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the court shall set the date for the hearing and the Department shall place the juvenile in a youth development center until the determination by the court at that hearing.

This act becomes effective October 1, 2003 and applies to dispositions entered on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 950 DATE _____

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

COMMITTEE SUBSTITUTE Y H950-CSSA-13 [v.4]

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 6

( ) WHICH CHANGES THE TITLE

by rewriting the line to read

"DEVELOPMENT CENTER OR A DETENTION FACILITY."

and on page 1, line 16

by inserting between "center" and the period the following:

"or detention facility"

and on page 1, line 18

by inserting between "center" and the comma the following:

"or detention facility"

and on page 2, line 1

by inserting between "center" and "until" the following:

"or detention facility".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 950 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN A COURT ORDER BEFORE PLACING A JUVENILE COMMITTED TO A TRAINING SCHOOL IN AN ALTERNATIVE PROGRAM OF THE DEPARTMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 950
PROPOSED COMMITTEE SUBSTITUTE H950-PCS45107-SA-13

Short Title: Juvenile Commitment to DJJDP. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO OBTAIN THE APPROVAL OF THE COURT BEFORE PLACING A JUVENILE COMMITTED TO THE DEPARTMENT IN A PROGRAM NOT LOCATED IN A YOUTH DEVELOPMENT CENTER OR DETENTION FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-2513(e) reads as rewritten:

"(e) A commitment order accompanied by information requested by the Department shall be forwarded to the Department. The Department shall place the juvenile in the youth development center that would best provide for the juvenile's needs and shall notify the committing court. The Department may assign a juvenile committed for delinquency to any institution ~~or other program~~ of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile.

The Department, after assessment of the juvenile, may provide commitment services to the juvenile in a program not located in a youth development center or detention facility. If the Department recommends that commitment services for the juvenile are to be provided in a setting that is not located in a youth development center or detention facility, the Department shall file a motion, along with information about the recommended services for the juvenile, with the committing court prior to placing the juvenile in the identified commitment program. The Department shall send notice of the motion to the District Attorney, the juvenile, and the juvenile's attorney. Upon receipt of the motion filed by the Department, the court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the date for that hearing shall be set by the

court and the Department shall place the juvenile in a youth development center or detention facility until the determination of the court at that hearing."

SECTION 2. This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 951

Short Title:	Create Civil No-Contact Protective Orders.	(Public)
Sponsors:	Representative Hackney.	
Referred to:	Judiciary I.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Purpose.**

Victims of sexual assault desire safety and protection from future interactions with their offenders, and it is the purpose of this Chapter that when the crime of sexual assault is committed against another, the victim should be able to seek a simple civil remedy requiring that the offender be prohibited from having any contact with the victim.

"**§ 50C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – An emergency or plenary order granted under this Chapter, which includes a remedy authorized by G.S. 50C-13.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching or fondling by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

"**§ 50C-4. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil court by any of the following:

(1) A person who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration.

(2) A person on behalf of a minor child or an adult who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, but because of age, disability, health, or inaccessibility cannot file the petition.

"**§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil court, unless specific courts are designated by local rule or order.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-6. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit and shall allege that the petitioner is or has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

(a) Any proceeding to obtain, modify, reopen, or appeal a civil no-contact order shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes. The standard of proof in a civil no-contact order proceeding is proof by a preponderance of the evidence.

(b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed to accompany and confer with the victim, unless otherwise directed by the court. Court administrators shall allow rape crisis advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized practice of law when providing assistance pursuant to this subsection.

"**§ 50C-8. Venue.**

A petition for a civil no-contact order may be filed in any of the following:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the alleged nonconsensual sexual conduct or nonconsensual sexual penetration occurred.

"**§ 50C-9. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within seven days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature. Special process servers may be appointed at any time, and their designation shall not affect the responsibilities and authority of the sheriff or other official process servers.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a plenary civil no-contact order by default for the remedy sought in the petition if the respondent has been served or given notice in accordance with subsection (a) of this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-10. Hearings.**

A petition for a civil no-contact order shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of the petition. Nothing in this section shall prevent the court from reserving issues if jurisdiction or notice requirements are not met.

"**§ 50C-11. Continuance.**

(a) Petitions for emergency remedies shall be granted or denied in accordance with the standards of G.S. 50C-14, regardless of the respondent's appearance or presence in court.

A plenary civil no-contact order shall issue if the petitioner has served notice of the hearing for the plenary civil no-contact order on the respondent in accordance with G.S. 50C-9 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-13.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-9.

(3) The respondent has answered or is in default.

"**§ 50C-16. Duration; extension of orders.**

(a) Unless reopened or extended or voided by entry of an order of greater duration, an emergency civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a plenary civil no-contact order shall be effective for a fixed period of time, not to exceed two years. A plenary civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment or for a fixed period of time not exceeding two years.

(c) Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of subsection (c) of G.S. 50C-14, which applies only when the court is unavailable at the close of business or on a court holiday.

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

(e) Nothing in this Chapter shall be construed to encourage the practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a civil no-contact order.

"**§ 50C-17. Contents of orders.**

(a) All civil no-contact orders shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(b) A civil no-contact order shall further state the following:

(1) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by

the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is an emergency or plenary order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in an emergency civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1 misdemeanor. Any second or subsequent violation is a Class H felony.'

"**§ 50C-18. Notice of orders.**

(a) Upon issuance of any civil no-contact order, the clerk of the court issuing the order shall immediately, or on the next court day if an emergency order is issued in accordance with subsection (c) of G.S. 50C-14, do the following:

(1) Enter the order on the record and file it in accordance with the district court procedures.

(2) Provide a filed stamped copy of the order to the respondent, if present, and to the petitioner.

(b) The clerk of the issuing judge shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent. If the order was issued in accordance with subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy of the order with the sheriff or other law enforcement personnel charged with maintaining criminal records.

(c) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order or short form notification.

(d) If the person against whom the civil no-contact order is issued is arrested and the written order is issued in accordance with subsection (c) of G.S. 50C-14 and received by the custodial law enforcement agency before the respondent or offender is released from custody, the custodial law enforcement agent shall promptly serve the order upon the respondent or offender before the respondent or offender is released from custody. In no event shall detention of the respondent or offender be extended for hearing on the petition for civil no-contact order or receipt of the order issued under G.S. 50C-14.

(e) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

(f) Upon the request of the petitioner, within 24 hours of the issuance of a civil no-contact order, the clerk of the issuing judge shall send written notice of the order along with a certified copy of the order to any school, college, or university at which the petitioner is enrolled.

"**§ 50C-19. Violation.**

A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A second or subsequent violation is a Class H felony.

"**§ 50C-20. Arrest without warrant.**

(a) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-21. Data maintenance by law enforcement agencies.**

(a) All local sheriff's departments shall furnish to the local police departments, on the same day as received, in the form and detail the police department requires, copies of any recorded emergency or plenary civil no-contact orders issued by the court and transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data system on the same day it is issued by the court. If an emergency civil no-contact order was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered in the police department's data system as soon as possible after receipt from the clerk of the court.

(b) Each local police department shall maintain a complete and systematic record and index of all valid and recorded civil no-contact orders issued under this Chapter. The recorded civil no-contact orders issued under this Chapter shall be used to inform all dispatchers and law enforcement personnel at the scene of an alleged incident of nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or nonconsensual sexual penetration involving the victim, and the effective dates and terms of any recorded civil no-contact order."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under Chapter 50C of the General Statutes, as enacted in Section 1 of this act, on or after that date.

HOUSE BILL 951:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 23, 2003	**Summary by:**	R. Erika Churchill*
Version:	First Edition		Committee Co-Counsel

SUMMARY: The bill would allow the courts to issue protective orders, like domestic violence orders under Chapter 50B, in situations where a person has been a victim of nonconsensual sexual conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as a crime.

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: Senate Bill 916 creates a new Chapter 50C entitled "Civil No-Contact Orders". The bill establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where non-consensual sexual conduct has occurred.

G.S. 50C-3 sets out applicable definitions for the Chapter, including definitions of "nonconsensual", "sexual conduct" and "sexual penetration".

G.S. 50C-4 permits a petition for a civil no-contact order to be filed by a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, or on behalf of another person who is such a victim.

G.S. 50C-5 sets out the procedures for initiating an action. Actions are started by the filing of a petition, with no filing fee or sheriff's service fee.

G.S. 50C-6 requires that the petition be accompanied by an affidavit alleging that the petitioner has been a victim under this law.

G.S. 50C-7 applies the Rules of Civil Procedure to proceedings under this law and requires findings by the court of proof by a preponderance of the evidence. Rape crisis advocates are permitted to assist in the petition process and as such shall not be considered to be unlawfully practicing law.

G.S. 50C-8 allows actions to be brought where either the petitioner or the respondent reside or where the nonconsensual sexual act occurred.

G.S. 50C-9 sets out the service of process that applies in these proceedings.

G.S. 50C-10 allows proceedings under this law to be handled as expedited proceedings.

G.S. 50C-12 allows testimony of the petitioner's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-13 requires the court to issue a no-contact order where it is found that the petition is a victim of nonconsensual sexual acts. The order shall require the respondent to stay away from the petitioner including prohibitions against entering the petitioner's school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy shall not be based on the

fact that the respondent was justified in using force or was intoxicated, and not based on the petitioner acting or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-14 sets out a procedure for the issuance of emergency orders.

G.S. 50C-16 limits emergency orders to a minimum of 14 days and a maximum of 21 days. Plenary orders may last for a period of up to two years and may be renewed.

G.S. 50C-17 sets out the requirement for the contents of the order, including notice that violation of the order is punishable as a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-18 sets out a process of filing notices of the orders with law enforcement and service of orders on the respondent.

G.S. 50C-19 makes a violation of a no-contact order a Class A1 misdemeanor for a first offense and as a Class H felony for subsequence offenses.

G.S. 50C-20 authorizes an officer to arrest without a warrant for a violation of an order.

G.S. 50C-21 requires law enforcement to maintain a database of all outstanding no-contact orders.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to acts committed on or after that date.

*O. Walker Reagan substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 951
PROPOSED COMMITTEE SUBSTITUTE H951-CSST-22 [v.3]

4/28/2003 3:07:03 PM

Short Title: Create Civil No-Contact Protective Orders. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 50C.

"Civil No-Contact Orders.

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – A temporary or permanent order granted under this Chapter, which includes a remedy authorized by G.S. 50C-9.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching, fondling or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of

the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(6) Stalking. – Following on more than one occasion or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(8) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon a person, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

c. Stalking.

d. Willfully threatening, orally, in writing, or by any other means, to physically injure the victim in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the victim to believe that the threat will be carried out.

(9) Victim. – A person against whom an act of unlawful conduct has been committed.

"**§ 50C-3. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil district court by any of the following:

(1) A person who is a victim of unlawful conduct.

(2) A person on behalf of a minor child or an incompetent adult, who is a victim of unlawful conduct who cannot file the petition on his or her own behalf.

"**§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil district court.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-5. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified, or accompanied by an affidavit. The petition or affidavit shall allege that the petitioner is one of the following:

(1) A victim of unlawful conduct by the respondent.

(2) A person filing on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-6. Venue.**

A petition for a civil no-contact order may be filed in any of the following counties:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the unlawful conduct took place.

"**§ 50C-7. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within ten days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if all of the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-8. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the victim is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the victim with the respondent when this evidence is offered by the respondent regarding the issue of whether the victim consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the victim and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the victim and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the victim may be examined or cross-examined.

"**§ 50C-9. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner has proven that the petitioner is a victim of unlawful conduct a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-10 for emergency orders or G.S. 50C-11 for permanent orders. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim.

(b) The court may include any one or more of the following orders in its temporary or permanent orders under this Chapter:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent to cease stalking the victim, including at the victim's workplace.

(3) Order the respondent to cease harassment of the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to telephone the victim.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present, if reasonable.

(7) Order other relief deemed necessary and appropriate by the court.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.
(2) The respondent was voluntarily intoxicated.
(3) The victim acted or failed to act in self-defense or defense of another.
(4) The victim left or failed to leave the residence or household to avoid further unlawful conduct by the respondent.

(d) Monetary damages are not recoverable as a remedy under this Chapter.

"**§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

(a) A court may issue a temporary civil no-contact order if the petitioner satisfies the following requirements:
(1) The petitioner has met the requirements of G.S. 50C-9.
(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-11 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day temporary order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner or victim and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue an temporary civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise, an emergency civil no-contact order at all times, whether or not the court is in session.

"**§ 50C-11. Permanent civil no-contact order.**

A permanent civil no-contact order shall issue if the petitioner has served notice of the hearing for the permanent civil no-contact order on the respondent in accordance with G.S. 50C-7 and satisfied the following requirements:
(1) The petitioner has met the requirements of G.S. 50C-9.
(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-7.
(3) The respondent has answered or is in default.

"**§ 50C-12. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time, not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the petitioner filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 50C-10(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**§ 50C-13. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**§ 50C-14. Notice of orders.**

(a) The clerk of court shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent.

(b) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

"**§ 50C-15. Violation.**

A knowing violation of a civil no-contact order shall be punished as contempt of court.

"**§ 50C-16. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(b) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(c) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under this act, on or after that date.

HOUSE BILL 951:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 28, 2003	**Summary by:**	R. Erika Churchill*
Version:	H951-CSST-22 v.3		Committee Co-Counsel

SUMMARY: The proposed committee substitute would allow the courts to issue protective orders, like domestic violence orders under Chapter 50B, in situations where a person has been a victim of nonconsensual sexual conduct, stalking, or unlawful conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as contempt of court.

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: The proposed committee substitute creates a new Chapter 50C entitled "Civil No-Contact Orders". The pcs establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where non-consensual sexual conduct, stalking or unlawful conduct has occurred.

G.S. 50C-2 sets out applicable definitions for the Chapter, including definitions of "nonconsensual", "sexual conduct", "sexual penetration", "stalking", and "unlawful conduct".

G.S. 50C-3 permits a petition for a civil no-contact order to be filed by a victim of unlawful conduct, the definition of which includes stalking and nonconsensual sexual conduct, or on behalf of another person who is such a victim.

G.S. 50C-4 sets out the procedures for initiating an action. The filing of a petition starts the process. No fees for filing or service by the Sheriff are to be charged. The clerk's office is to provide simplified forms and clerical assistance to any person not represented by counsel.

G.S. 50C-5 requires that the petition be accompanied by an affidavit alleging that the petitioner or the person on whose behalf the action is brought is or has been a victim of unlawful conduct by the respondent. The petitioner does not have to disclose the victim's address if such disclosure would place the victim or any member of the victim's family or household at risk for further abuse.

G.S. 50C-6 allows actions to be brought where either the petitioner or the respondent reside or where the unlawful conduct occurred.

G.S. 50C-7 sets out the service of process that applies in these proceedings.

G.S. 50C-8 allows testimony of the petitioner's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-9 requires the court to issue a no-contact order when it finds that the petitioner has proven that the petitioner is a victim of unlawful conduct. The order may require the respondent to stay away from the petitioner including prohibitions against entering the petitioner's school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy may

not be based on the fact that the respondent was justified in using force or was intoxicated, and not based on the petitioner acting or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-10 sets out a procedure for the issuance of emergency orders. Prior service on the respondent is not necessary if there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur.

G.S. 50C-11 sets out a procedure for the issuance of permanent order, which requires service of the respondent.

G.S. 50C-12 sets out the duration of the orders. Absent further order of the court, a temporary order must be no less than 14 days or more than 21 days. Unless part of another civil proceeding, the permanent order is effective for the period stated in the order, not to exceed one year. Both temporary and permanent orders may be extended for good cause shown. Extensions must be done in open court.

G.S. 50C-13 sets out the basic information each order is to contain, including a statement that a knowing violation is punishable as contempt of court which may result in fine or imprisonment.

G.S. 50C-14 sets out the process by which notice of the order is to be given.

G.S. 50C-15 makes a violation of a no-contact order punishable as contempt of court.

G.S. 50C-16 authorizes an officer to arrest without a warrant for a violation of an order.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to acts committed on or after that date.

*O. Walker Reagan substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 1125

Short Title:	Uniform Terms for Judges.	(Public)
Sponsors:	Representatives Hackney, Culpepper (Primary Sponsors); Stiller and McComas.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE UNIFORM TERMS FOR ALL JUDGES OF THE GENERAL COURT OF JUSTICE BY PROVIDING 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 election, primary or otherwise, 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 2004 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.

HOUSE BILL 1125:
Uniform Terms for Judges

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Hackney & Rep. Culpepper
Date:	April 24, 2003		
Version:	1st Edition	**Summary by:**	Susan L. Sitze Committee Counsel

SUMMARY: ***House Bill 1125 would provide for uniform terms for all judges of the General Court of Justice by providing eight-year terms for District Court Judges.***

CURRENT LAW: Section 16 of Article IV of the North Carolina Constitution currently provides for eight-year terms for Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court.

Section 10 of Article IV of the North Carolina Constitution currently provides for four-year terms for District Court Judges.

BILL ANALYSIS: **Section 1** of the bill sets forth an amendment to Section 10 of Article IV of the North Carolina Constitution to provide for eight-year terms for District Court Judges.

Section 2 of the bill provides that the amendment in Section 1 shall be submitted to the qualified voters of the State at the next statewide election or primary and sets for the specific question to be placed on the ballot.

Section 3 of the bill provides that if a majority of the votes cast on the ballot question are in favor of the amendment in Section 1, the State Board of Elections shall certify the amendments to the Secretary of State. If the amendment passes, the new eight-year term applies beginning with District Court Judges elected in the 2004 general election.

Section 4 of the bill amends G.S. 7A-140 to make a corresponding change in that statute, that District Court Judges are elected for eight-year terms rather than four-year terms. This section only becomes effective if the constitutional amendment in Section 1 is approved.

Section 5 of the bill amends G.S. 163-1 to make a corresponding change in that statute. This section only becomes effective if the constitutional amendment in Section 1 is approved.

Section 6 of the bill provides that Sections 4 and 5 only become effective if the constitutional amendment is approved.

Section 7 of the bill provides that the bill is effective when it becomes law.

House Judiciary I Committee

April 29, 2003

Minutes

The House Judiciary I Committee met on Tuesday, April 29, 2003 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 Capps, Clary, Daughtry, Harrell, Miller, Ross, Sexton, West and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that House Bill 877 had been removed from the agenda at the request of the Family Law Section of the Bar Association in order to allow time for additional work on the bill, and that Representative Eddins had indicated that he was not ready to proceed with House Bill 911. He further stated that House Bill 1123 would not be heard during this meeting.

The committee returned to House Bill 951, AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT. The bill was first explained during the Judiciary I meeting on April 24. On April 28, a proposed committee substitute was adopted for discussion. Following that discussion, Chairman Hackney requested that the staff prepare a new committee substitute that would incorporate suggestions that were made during the meeting. The new proposed committee substitute was distributed, (Attachment III).

Representative Miller moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Erika Churchill, Committee Counsel, was recognized to describe the differences in the new committee substitute. She said that "maltreatment" had been removed from the definition of "abuse." She said that the definition of sexual penetration had been changed to conform to the definition of penetration and sexual act in G. S. 14-27.1. Ms. Churchill stated that the remaining changes were the insertion of the word "knowingly" twice on lines 13 and 14 of page 7. The bill analysis prepared by Ms. Churchill is attached, (Attachment IV).

Representative Daughtry asked why there was no requirement for a fee for filing petitions for civil no-contact orders.

Chairman Hackney replied that it had been decided that there should not be any financial impediment to the obtaining of a no-contact order, or for service of it.

Representative Daughtry requested an amendment to remove subsection (b) on line 36 of page 2 of the bill.

Committee discussion followed.

Ms. Monika Johnson Hostler, North Carolina Coalition Against Sexual Assault, was recognized to offer additional comment.

Representative Daughtry was recognized to offer an amendment, (Attachment V). He stated that the amendment would require that a fee be paid for filing the petition just as for any other action that is filed.

Representative Capps asked if there might be cases where a person who needs to file the complaint might not have the money to pay for the filing.

Ms. Hostler replied that charging a filing fee to a victim of domestic or sexual violence would jeopardize the state from receiving $23 million in federal funds.

Representative Daughtry withdrew the amendment.

Vice Chair Ross assumed the chair.

Representative Hackney moved for a favorable report for the committee substitute, and unfavorable as to the original bill. The motion carried, (Attachment VI).

Chairman Hackney assumed the chair.

House Bill 1037, AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRIAL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES, (Attachment VII), was the next bill before the committee. The bill was explained and discussed during the April 2 meeting of the committee. The bill received a favorable report as to a committee substitute incorporating an amendment offered by Representative Capps (see amendment in the attachments to that meeting). The bill was not reported out due to expressed concern about the detention section of the bill. The bill was again on the April 28 agenda, but was removed because it is a Durham County issue and Representative Miller was unable to attend the meeting.

Representative Miller indicated that the Board of County Commissioners did not object to the removal of the detention section of the bill. He indicated that the main issue that the commissioners were concerned with was being able to use photographs in the event a juvenile escaped, and also the penalty section regarding releasing a photograph.

Representative Miller moved to reconsider the vote by which House Bill 1037 received a favorable report. The motion carried.

Representative Miller offered an amendment, (Attachment VII) to remove the detention section of the bill. Following brief discussion, the amendment was adopted. Representative Daughtry voted against the motion.

Representative Miller moved a favorable report for a committee substitute incorporating the amendment. The motion carried, (Attachment VIII). A copy of the committee substitute is attached, (Attachment IX).

Representative Daughtry requested that the vote by which House Bill 562, Charlotte Photo Speed Measuring, received a favorable report be reconsidered.

Ms. Sitze noted that the bill had been reported out and had been placed on the House calendar. She said that the bill would have to be re-referred to the committee in order to be reconsidered.

Chairman Hackney ruled the motion was not in order.

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE
TUESDAY, APRIL 29, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 877 – CLARIFY POSTSEPARATION SUPPORT LAWS
REPRESENTATIVE HACKNEY

HOUSE BILL 911 – NO PROFIT FROM CRIME
REPRESENTATIVE EDDINS

HOUSE BILL 951 – CREATE CIVIL NO-CONTACT PROTECTION ORDERS
REPRESENTATIVE HACKNEY

HOUSE BILL 1037 – AMEND JUVENILE LAW
REPRESENTATIVE LUEBKE

HOUSE BILL 1125 – UNIFORM TERMS FOR JUDGES
REPRESENTATIVE HACKNEY

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — April 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	NC Bar Ass'n
Rob McRight	Intern (Rep. Hackney)
Monica Johnson Hostler	NCCASA
Anne Wiinne	AOC
Will Polk	DOJ
Joanne Stevens	NCCASA
Cathy Dirk	DJJDP

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 951
PROPOSED COMMITTEE SUBSTITUTE H951-PCS45110-ST-22

Short Title: Create Civil No-Contact Protective Orders. (Public)

Sponsors:

Referred to:

April 8, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50C.**

"**Civil No-Contact Orders.**

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – A temporary or permanent order granted under this Chapter, which includes a remedy authorized by G.S. 50C-9.

(3) Nonconsensual. – A lack of freely given consent.

(4) Sexual conduct. – Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(5) Sexual penetration. – The penetration, however slight, by any object into the genital or anal opening of another person's body. Evidence of emission of semen is not required to prove sexual penetration.

(6) Stalking. – Following on more than one occasion or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon a person, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

c. Stalking.

d. Willfully threatening, orally, in writing, or by any other means, to physically injure the victim in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the victim to believe that the threat will be carried out.

(8) Victim. – A person against whom an act of unlawful conduct has been committed.

"**§ 50C-3. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil district court by any of the following:

(1) A person who is a victim of unlawful conduct.

(2) A person on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct who cannot file the petition on his or her own behalf.

"**§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil district court.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-5. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified or accompanied by an affidavit. The petition or affidavit shall allege that the petitioner is one of the following:

(1) A victim of unlawful conduct by the respondent.

(2) A person filing on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct by the respondent.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-6. Venue.**

A petition for a civil no-contact order may be filed in any of the following counties:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the unlawful conduct took place.

"**§ 50C-7. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within 10 days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if all of the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a civil no-contact order by default for the remedy sought in the petition if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-8. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the victim is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the victim with the respondent when this evidence is offered by the respondent regarding

the issue of whether the victim consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the victim and the respondent. Unless the court finds that reasonably specific information as to date, time, or place, or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the victim and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the victim may be examined or cross-examined.

"**§ 50C-9. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner has proven that the petitioner is a victim of unlawful conduct, a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-10 for emergency orders or G.S. 50C-11 for permanent orders. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim.

(b) The court may include any one or more of the following orders in its temporary or permanent orders under this Chapter:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim.

(2) Order the respondent to cease stalking the victim, including at the victim's workplace.

(3) Order the respondent to cease harassment of the victim.

(4) Order the respondent not to abuse or injure the victim.

(5) Order the respondent not to telephone the victim.

(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present, if reasonable.

(7) Order other relief deemed necessary and appropriate by the court.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.

(2) The respondent was voluntarily intoxicated.

(3) The victim acted or failed to act in self-defense or defense of another.

(4) The victim left or failed to leave the residence or household to avoid further unlawful conduct by the respondent.

(d) Monetary damages are not recoverable as a remedy under this Chapter.

"**§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

(a) A court may issue a temporary civil no-contact order if the petitioner satisfies the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-9.

(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-11 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day temporary order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner or victim and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by facsimile, or otherwise an emergency civil no-contact order at all times, whether or not the court is in session.

"**§ 50C-11. Permanent civil no-contact order.**

A permanent civil no-contact order shall issue if the petitioner has served notice of the hearing for the permanent civil no-contact order on the respondent in accordance with G.S. 50C-7 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-9.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-7.

(3) The respondent has answered or is in default.

"**§ 50C-12. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not less than 14 days nor greater than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the petitioner filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 50C-10(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**§ 50C-13. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**§ 50C-14. Notice of orders.**

(a) The clerk of court shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent.

(b) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for

service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

"**§ 50C-15. Violation.**

A knowing violation of a civil no-contact order shall be punished as contempt of court.

"**§ 50C-16. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(b) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has knowingly committed or is knowingly committing a violation of a civil no-contact order.

(c) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

HOUSE BILL 951:
Create Civil No-Contact Protective Orders.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Hackney
Date:	April 29, 2003	**Summary by:**	R. Erika Churchill*
Version:	H951-CSST-22 v.4		Committee Co-Counsel

SUMMARY: ***The proposed committee substitute would allow the courts to issue protective orders, like domestic violence orders under Chapter 50B, in situations where a person has been a victim of nonconsensual sexual conduct, stalking, or unlawful conduct. A protective order under this law would restrain a person from future contact with the victim and violations of orders would be punished as contempt of court.***

CURRENT LAW: Chapter 50B allows protective orders to be issued between persons who have or previously had some form of domestic relationship.

BILL ANALYSIS: The proposed committee substitute creates a new Chapter 50C entitled "Civil No-Contact Orders". The pcs establishes a procedure for seeking protective orders, including injunctive orders issued ex parte, in situations where non-consensual sexual conduct, stalking or unlawful conduct has occurred.

G.S. 50C-2 sets out applicable definitions for the Chapter, including definitions of "nonconsensual", "sexual conduct", "sexual penetration", "stalking", and "unlawful conduct".

G.S. 50C-3 permits a petition for a civil no-contact order to be filed by a victim of unlawful conduct, the definition of which includes stalking and nonconsensual sexual conduct, or on behalf of another person who is such a victim.

G.S. 50C-4 sets out the procedures for initiating an action. The filing of a petition starts the process. No fees for filing or service by the Sheriff are to be charged. The clerk's office is to provide simplified forms and clerical assistance to any person not represented by counsel.

G.S. 50C-5 requires that the petition be accompanied by an affidavit alleging that the petitioner or the person on whose behalf the action is brought is or has been a victim of unlawful conduct by the respondent. The petitioner does not have to disclose the victim's address if such disclosure would place the victim or any member of the victim's family or household at risk for further abuse.

G.S. 50C-6 allows actions to be brought where either the petitioner or the respondent reside or where the unlawful conduct occurred.

G.S. 50C-7 sets out the service of process that applies in these proceedings.

G.S. 50C-8 allows testimony of the petitioner's past sexual conduct to be heard "in camera" by the court. The court is not allowed to consider the evidence of past sexual conduct unless the court finds the evidence to be relevant and that the probative value outweighs the danger of unfair prejudice.

G.S. 50C-9 requires the court to issue a no-contact order when it finds that the petitioner has proven that the petitioner is a victim of unlawful conduct. The order may require the respondent to stay away from the petitioner including prohibitions against entering the petitioner's school, place of employment or other specified places at times when the petitioner is present. Denial of a remedy may

not be based on the fact that the respondent has cause for use of force or was intoxicated, and not based on the petitioner acting or failing to act in self-defense, or leaving or failing to leave a residence or household. Monetary damages are not allowed to be recovered under this law.

G.S. 50C-10 sets out a procedure for the issuance of emergency orders. Prior service on the respondent is not necessary if there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur.

G.S. 50C-11 sets out a procedure for the issuance of permanent order, which requires service of the respondent.

G.S. 50C-12 sets out the duration of the orders. Absent further order of the court, a temporary order must be no less than 14 days or more than 21 days. Unless part of another civil proceeding, the permanent order is effective for the period stated in the order, not to exceed one year. Both temporary and permanent orders may be extended for good cause shown. Extensions must be done in open court.

G.S. 50C-13 sets out the basic information each order is to contain, including a statement that a knowing violation is punishable as contempt of court which may result in fine or imprisonment.

G.S. 50C-14 sets out the process by which notice of the order is to be given.

G.S. 50C-15 makes a violation of a no-contact order punishable as contempt of court.

G.S. 50C-16 authorizes an officer to arrest without a warrant for a violation of an order.

EFFECTIVE DATE: The bill would become effective December 1, 2003 and would apply to acts committed on or after that date.

*O. Walker Reagan substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT V

EDITION No. _____

H. B. No. H951-CSST-22.X4 DATE 4-29-03

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Daughtry
Sen.)

moves to amend the bill on page 2, lines 36-38

( ) WHICH CHANGES THE TITLE

by

deleting those lines and renumbering the remaining subsection accordingly;

and further moves to amend the bill on page 2 line 33 by rewriting that line to read:

"50C-4. Commencement of action; assistance."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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. 951 A BILL TO BE ENTITLED AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF SEXUAL ASSAULT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1037

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

H1037-ASA-13 [v.1]

Date _____,2003

Comm. Sub. [YES]
Amends Title [YES]
H1037-PCS60309-SA-11

Representative Miller

moves to amend the bill on page 1, lines 3-8
by rewriting the lines to read:
"TO ESCAPE AND TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES."

And on page 2, lines 1-2
By rewriting the lines to read:
"(a1) A youth development center or other juvenile facility may photograph a juvenile who has been committed to the facility."

And on page 2, line 28
By rewriting that line to read:
"other juvenile facility, or a holdover facility or escapes"

and on page 2, line 43 through page 3, line 33
by deleting those lines;

and on page 3, line 34
by deleting "Section 6." And inserting "Section 3."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1037

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

H1037-ASA-13 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1037 A BILL TO BE ENTITLED AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE; TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES; TO ALLOW THE HOLDING OF A JUVENILE IN A LOCAL CONFINEMENT FACILITY WHILE AWAITING TRIAL AS AN ADULT; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1037
PROPOSED COMMITTEE SUBSTITUTE H1037-PCS45108-SA-16

Short Title: Amend Juvenile Law. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CRIMINAL PENALTIES FOR ALLOWING JUVENILES TO ESCAPE AND TO ALLOW JUVENILE DETENTION FACILITIES TO PHOTOGRAPH JUVENILES AND TO RELEASE THE PHOTOGRAPHS WHEN THE JUVENILE ESCAPES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-239 reads as rewritten:

"**§ 14-239. Allowing prisoners to escape; punishment.**

If any sheriff, deputy sheriff, ~~or~~ jailer, or other custodial personnel shall willfully or wantonly allow the escape of any person committed to ~~his~~ that person's custody who is (i) a person charged with a crime, ~~or~~ (ii) a person sentenced by the court upon conviction of any offense, or (iii) committed to the Department of Juvenile Justice and Delinquency Prevention, ~~he~~ that person shall be guilty of a Class 1 misdemeanor. No prosecution shall be brought against any such officer pursuant to this section by reason of a prisoner being allowed to participate pursuant to court order in any work release, work study, community service, or other lawful program, or by reason of any such prisoner failing to return from participation in any such program."

SECTION 2. G.S. 7B-2102 reads as rewritten:

"**§ 7B-2102. Fingerprinting and photographing juveniles.**

(a) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701, when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Department.

(a1) A youth development center or other juvenile facility may photograph a juvenile who has been committed to the facility.

(b) If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints

or photograph have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.

(c) A law enforcement ~~officer~~ officer, facility, or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.

(d) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200. Fingerprints and photographs taken pursuant to this section shall be maintained separately from any juvenile record, other than the electronic file maintained by the State Bureau of Investigation.

(d1) Notwithstanding subsection (d) of this section, photographs of a juvenile may be released to the public if the juvenile escapes from a youth development center or other juvenile facility or a holdover facility or escapes from the custody of juvenile personnel or a local law enforcement officer.

(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

(1) The juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
(2) The court does not find probable cause pursuant to G.S. 7B-2202; or
(3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent."

SECTION 3. Section 1 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2003.

House Judiciary I Committee

May 8, 2003

Minutes

The House Judiciary I Committee met on Thursday, May 8, 2003 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, Harrell, Miller and Ross. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney noted that a quorum was not present, but that explanations of the bills would begin. He recognized Ms. Susan Sitze, Committee Counsel, for an explanation of Senate Bill 326, AN ACT TO CLARIFY THE LAW ON CHANGING THE FORMS OF BUSINESSES FOR UNEMPLOYMENT INSURANCE TAX PURPOSES AND TO INCREASE UNEMPLOYMENT TAX AVOIDANCE (SUTA DUMPING), (Attachment III). Ms. Sitze noted that companies have an unemployment tax rate based on the number of employees who are laid off. She said that some companies are creating a new company after laying off employees in order to get a lower tax rate without the history of layoffs and transfer employees from the previous company to the newer company that would allow them to pay lower unemployment taxes. She said that the bill would clarify that this practice is illegal by saying that any new employing unit does not receive a new unemployment insurance tax number if there is continuity of control of the business enterprise. Ms. Sitze discussed the penalties set forth in the bill. Those penalties are explained in the bill analysis prepared by Ms. Sitze. It is attached to the minutes, (Attachment IV).

Mr. David Clegg, Employment Security Commission, was recognized and expressed full support for the bill.

Mr. Jim Ahler, North Carolina Certified Public Accountants Association, also spoke in support of the legislation.

Because a quorum was not present, the bill was displaced and no action was taken.

Representative Alexander was recognized for an explanation of Senator Clodfelter's bill, Senate Bill 630, AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER THE LAWS RELATING TO DOMESTIC VIOLENCE, (Attachment V). Representative Alexander began her explanation by noting that the North Carolina Coalition Against Domestic Violence, and the Council for Women Domestic Violence Commission supported the bill. She said that the bill makes two changes to the statutes pertaining to domestic violence. The first change would clarify that a protective order includes any order entered by the court upon hearing, or by

consent of the parties. The second change makes it clear that protective orders can be renewed as long as the motion is made by the aggrieved party prior to the expiration of the current order.

A bill analysis, prepared by Ms. Erika Churchill, Committee Counsel, gives further explanation of the bill, (Attachment VI).

Representative Alexander offered an amendment (Attachment VII) to clarify that an order may be renewed up to one year. Upon vote of the committee, the amendment was adopted.

Ms. Beth Froehling, Public Policy Specialist, North Carolina Coalition Against Domestic Violence, was recognized, and spoke in support of the bill saying that the clarifications would make the domestic violence laws more effective for victims.

Ms. Leslie Starsoneck, Executive Director, Council for Women Domestic Violence Commission, spoke in support of the bill.

Representative Ross noted concern that the bill allows protective orders to include consent orders.

Ms. Anne Winner, representing North Carolina Coalition Against Domestic Violence, was recognized and responded to Representative Ross' concerns regarding consent orders. Chairman Hackney added that the bill codifies existing practice.

Chairman Hackney reminded the committee that a quorum was not present, and asked if any member had objection to going forward with a vote. He asked if a failure to have an objection to the lack of a quorum could constitute a waiver of the requirement. Ms. Sitze replied that it was her understanding that if members present did not object to a lack of quorum, a vote could be taken. She said that this would not prevent a member who was not present to later offering an objection and trying to pull the bill back before the committee.

Chairman Hackney ruled that they would go forward with a vote.

Representative Alexander moved that the amendment be rolled into a House committee substitute, that the committee substitute be given a favorable report, and the original bill an unfavorable report. The motion carried, (Attachment VIII). A copy is the committee substitute is attached (Attachment IX).

The committee returned to Senate Bill 326.

Representative Harrell moved a favorable report for Senate Bill 324. Upon vote of those present, the bill was given a favorable report, (Attachment X).

The meeting adjourned at 10:30 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
THURSDAY MAY 8, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 326 – DETERRING SUTA DUMPING
SENATOR HOYLE

SENATE BILL 630 – CLARIFY DEFINITION OF PROTECTIVE ORDER
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Froehling	NCCADV
Leslie Starsneck	CFW/DVC
Anne Winn	NCCADV
Jim Ahler	NCACPA
Tommy Harmon	"
RAY RIFFE	NC AFL-CIO
David Hess	ESC
Lallat Boyle	ESC
Jo McCants	AOC
John McMillan	MFAS
Michelle Frazier	NC Bar Ass'n

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie Allen	NC Statewatch

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 326
Judiciary I Committee Substitute Adopted 4/16/03

Short Title: Deterring SUTA Dumping. (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW ON CHANGING THE FORMS OF BUSINESSES FOR UNEMPLOYMENT INSURANCE TAX PURPOSES AND TO INCREASE PENALTIES, SO AS TO DETER THE PRACTICE OF STATE UNEMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) is amended by adding a new sub-subdivision to read:

"a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. 'Control of the business enterprise' may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

2. A 'continuity of control' will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form.

Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business."

SECTION 2. G.S. 96-18 is amended by adding a new subsection to read:

"(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Commission has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a 'contribution tax return preparer' to the same extent as it applies to an income tax preparer. As used in this subsection, a 'contribution tax return preparer' is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by 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.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn."

SECTION 3. Section 2 of this act becomes effective December 1, 2003. The remainder of this act is effective when this act becomes law.

SENATE BILL 326: Deterring SUTA Dumping.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Hoyle
Date:	May 8, 2003	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 326 would add language to the Unemployment Insurance (UI) law making it clearer that an employer cannot avoid a UI tax rate based on its history in the system by creating a dummy company without a bad tax rate and shifting employees there. The practice is known as State Unemployment Tax Avoidance or "SUTA dumping." The bill would also import penalties from the Tax Chapter 105 for employers who fraudulently engage in that practice and for practitioners who advise them to do so. The bill is based on a proposal by the Employment Security Commission. The clarifying language would be effective when the bill becomes law. The penalty changes would be effective December 1, 2003.

CURRENT LAW: The Unemployment Insurance system is funded mainly by contributions (a.k.a. taxes) paid by employers based on their experience rating with their workforce: to what extent their employees have been laid off or have quit for good cause attributable to the employer – and therefore have been paid unemployment benefits.

The U.S. Department of Labor has reported an increase in efforts by certain employers with unfavorable tax rates to manipulate their tax rates. The companies create new companies with a few employees, get a UI account number, and acquire a minimum tax rate. Then they move the bulk of the old company's employees to one of the new companies with the minimum tax rate and "dump" the higher tax rate of the older company.

The Employment Security Commission maintains that the practice is illegal under current law, which says that "whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit . . . the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his rate of contributions." *G.S. 96-9(c)(4)a.* A similar provision applies when a unit succeeds to or acquires "a distinct and severable portion of the organization."

The penalties provision of the UI law provides that anyone who knowingly makes a false statement or knowingly fails to disclose a material fact to avoid or reduce contributions is guilty of a Class 1 misdemeanor. *G.S. 96-18(b).* The general criminal statutes state that anyone who solicits the commission of any misdemeanor is guilty of a Class 3 misdemeanor. *G.S. 14-2.6(b).*

BILL ANALYSIS:

SB 326, based on a proposal by the Employment Security Commission, would do the following:

Sec. 1 – **Clarifying that SUTA Dumping is Illegal.** The bill would add a provision to the statute about account transfers saying that when a new employing unit is created it shall not be given a new UI account number if it results from an acquisition or change in form of an existing business enterprise if there is "continuity of control of the business enterprise." The bill describes in detail what would constitute that continuity of control. The language is patterned after a California statute.

Sec. 2. – **Incorporating Ch. 105 Tax Penalties by Reference.** The bill states that certain penalties in Chapter 105 concerning misrepresentation on income tax returns apply to the same extent to UI tax returns. There is some adaptation in this reference. This adds the following:

- A Class H felony for anyone who willfully attempts, or aids and abets an attempt to defeat or evade a UI tax if the following conditions are met in connection with a violation:
  - -- An employing unit has more than 10 employees.
  - -- A tax of more than $2,000 has not been paid.

-- An experience rating account balance has been overdrawn by more than $5,000.

- Graded felony penalties for willful assistance in filing a false or fraudulent return (whether or not the employer or chief financial officer knows it is false). Some of the felonies reach the higher ranges of the sentencing chart:
  - -- A Class C felony if the defendant is a contribution tax return preparer and the amount of tax evaded is $100,000 or more.
  - -- A Class F felony if the defendant is a contribution tax return preparer and the amount evaded is less than $100,000.
  - -- A Class G felony if the defendant is not a contribution tax return preparer.
- A penalty equal to 50% of a deficiency if the deficiency was caused by fraud.
- A provision for gaining jurisdiction in Wake County for penalty cases.

Here are the statutes from Chapter 105 the bill would incorporate by reference:

§ 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:

. . .

(6) Fraud. – If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

. . .

(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, is guilty of a 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.

. . .

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

**This summary was originally drafted by Bill Gilkeson and modified by Susan Sitze.*
S326-SMSA-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 630

Short Title: Clarify Definition of Protective Order. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER THE LAWS RELATING TO DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-1 reads as rewritten:

"**§ 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 continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(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.

(c) As used in this Chapter, the term 'protective order' includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties."

SECTION 2. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order ~~or approve any consent agreement~~ to bring about a cessation of acts of domestic violence. The orders ~~or agreements~~ may:

(1) Direct a party to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights;

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;

(8) Provide for possession of personal property of the parties;

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party,

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or

c. Otherwise interfering with the other party;

(10) Award attorney's fees to either party;

(11) Prohibit a party from purchasing a firearm for a time fixed in the order;

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered ~~or consent orders approved~~ pursuant to this Chapter shall be for a fixed period of time not to exceed one year. ~~Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year.~~The court may renew a protective order, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the

current order is not required for an order to be renewed. Protective orders ~~entered or consent orders approved~~entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, and dismissals of the order shall also be promptly entered."

SECTION 3. G.S. 50B-4(c) reads as rewritten:

"(c) A valid protective order entered pursuant to this ~~section~~ Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court."

SECTION 4. G.S. 50B-8 reads as rewritten:

"**§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.**

The granting of a protective order, ~~approval of a consent agreement,~~ prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals."

SECTION 5. This act is effective when it becomes law.

SENATE BILL 630:
Clarify Definition of Protective Order.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	May 8, 2003	**Summary by:**	R. Erika Churchill
Version:	Edition 1		Committee Counsel

SUMMARY: Senate Bill 630 would amend the law related to the issuance of protective orders under the domestic violence statutes by clarifying what are considered to be orders of the court and how protective orders can be renewed.

CURRENT LAW: Currently, protective orders are referred to in the applicable statutes by various names including protective orders, consent agreements and consent orders, all of which require signature by a judge. Protective orders can also be successively renewed for periods of one year at a time.

BILL ANALYSIS:

Sections 1 and 4. The bill creates a definition for protective orders as used in Chapter 50B to include any order entered under this Chapter including consent orders. Based on this definition, all other references in the Chapter to consent agreements or consent orders are repealed since they will no longer be necessary because of the new definition. Section 4 includes one of these conforming changes.

Section 2. The bill clarifies that a judge can renew protective orders, one year at a time, without any limit. A motion to renew the protective order has to be made before the expiration of the existing order. The court may renew the order for good cause that may include acts of domestic violence that occurred prior to the current order. Section 2 also makes conforming changes to the definition of protective order.

Section 3. The bill corrects an incorrect reference to "section" that should read "Chapter".

EFFECTIVE DATE: The act becomes effective when it becomes law.

*Walker Reagan contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VII**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-8-03

S. B. No. 630 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Alexander
Sen.)

1 moves to amend the bill on page 2, line 41
2 ( ) WHICH CHANGES THE TITLE
3 by inserting the following phrase after the ~~phrase~~
4 "phrase "protective order" :
5
6 "for a fixed period of time not to exceed
7 one year, ".
8
9
10
11
12
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14
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16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

2003 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
S.B. 630 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER THE LAWS RELATING TO DOMESTIC VIOLENCE

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 630
PROPOSED HOUSE COMMITTEE SUBSTITUTE S630-PCS35279-ST-39

Short Title: Clarify Definition of Protective Order. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER THE LAWS RELATING TO DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-1 reads as rewritten:

"**§ 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 continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(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.

(c) As used in this Chapter, the term 'protective order' includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties."

SECTION 2. G.S. 50B-3 reads as rewritten:

"**§ 50B-3. Relief.**

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order ~~or approve any consent agreement~~ to bring about a cessation of acts of domestic violence. The orders ~~or agreements~~ may:

(1) Direct a party to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide a spouse and his or her children suitable alternate housing;

(4) Award temporary custody of minor children and establish temporary visitation rights;

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

(6) Order either party to make payments for the support of a minor child as required by law;

(7) Order either party to make payments for the support of a spouse as required by law;

(8) Provide for possession of personal property of the parties;

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party,

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or

c. Otherwise interfering with the other party;

(10) Award attorney's fees to either party;

(11) Prohibit a party from purchasing a firearm for a time fixed in the order;

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission; and

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered ~~or consent orders approved~~ pursuant to this Chapter shall be for a fixed period of time not to exceed one year. ~~Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year.~~ The court may renew a protective order for a fixed period of time not to exceed one year, including an order that previously has been renewed, upon a motion by

the aggrieved party filed before the expiration of the current order. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders ~~entered or consent orders approved~~entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, and dismissals of the order shall also be promptly entered."

SECTION 3. G.S. 50B-4(c) reads as rewritten:

"(c) A valid protective order entered pursuant to this ~~section~~ Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court."

SECTION 4. G.S. 50B-8 reads as rewritten:

"§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

The granting of a protective order, ~~approval of a consent agreement,~~ prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals."

SECTION 5. This act is effective when it becomes law.

ATTACHMENT X

2003 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
S.B. 326 A BILL TO BE ENTITLED AN ACT AN ACT TO CLARIFY THE LAW ON CHANGING THE FORMS OF BUSINESSES FOR UNEMPLOYMENT INSURANCE TAX PURPOSES AND TO INCREASE PENALTIES, SO AS TO DETER THE PRACTICE OF STATE UNEMPLOYMENT TAX AVOIDANCE (SUTA DUMPING).

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 13, 2003

Minutes

The House Judiciary I Committee met on Tuesday, May 13, 2003 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 Capps, Harrell, Miller, Ross, Sexton and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Queen was recognized to explain Senate Bill 449, AN ACT TO CLARIFY ADMISSIBLE EVIDENCE THAT THE PERSON WITHDRAWING BLOOD IN AN IMPAIRED DRIVING CASE IS A LICENSED PHYSICIAN, NURSE, OR AN OTHERWISE QUALIFIED PERSON, (Attachment III). Senator Queen said that the bill was introduced at the request of the late District Attorney of Haywood County to solve a problem he was having with some of the judges who were requiring that a nurse or person who withdrew blood in a DWI case must personally appear in court and testify that they were qualified. This often meant that a nurse had to take time from work in order to appear. The bill provides that evidence of the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer, or by an affidavit of the person who withdrew the blood taken and it may be presumed sufficient unless challenged. A bill analysis, prepared by Ms. Susan Sitze, Committee Counsel, is attached to the minutes, (Attachment IV).

Vice Chair Ross assumed the chair in the absence of Chairman Hackney who had to leave to appear before a Senate committee.

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

In the absence of Senator Rand, Ms. Susan Sitze, Committee Counsel, was recognized to explain Senate Bill 539, AN ACT AMENDING THE LAW GOVERNING THE LIMITED PRACTICE OF OUT-OF-STATE ATTORNEYS-AT-LAW AND THE OPERATION OF THE COUNCIL AND DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR, (Attachment VI). Ms. Sitze said that the bill makes three changes to the laws governing the State Bar. She said that it would require all out-of-state attorneys who are seeking to be admitted on a one-case basis to disclose any disciplinary history that they have, including any disciplinary history they may have from another state where they sought to represent someone else in a single case. The bill also amends the powers of the State Bar Council to permit the Council or any of its committees to subpoena financial records relating to any account into which client or fiduciary funds were deposited. The third change expands the Disciplinary Hearing Commission of the State Bar from fifteen members to twenty members.

A copy of the bill analysis is attached, (Attachment VII).

Mr. John McMillan speaking on behalf of the State Bar spoke in support of the bill.

Ms. Carolyn Bakewell, NC State Bar, responded to questions and also spoke in support of the bill.

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

Senator Rand was recognized to explain Senate Bill 394, AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED, (Attachment IX). He said that the bill amends current law to allow a claim to be filed after the death of one of the spouses if the spouses were living separate and apart at the time of the death. He said that the claim against the estate is subject to the same filing and notice requirements as all other creditors of the state would be. He said that if no estate is opened, the equitable distribution actions must be filed within six months of the time of death.

Additional details of the bill may be found in the bill analysis prepared by Ms. Erika Churchill, Committee Counsel, (Attachment X).

Mr. Wade Harrison, a family attorney, stated that the bill is a good idea that needs to be done. He suggested some revisions that would make the bill more consistent with Chapter 28A.

Chairman Hackney assumed the chair.

A proposed House Committee Substitute was distributed, (Attachment XI). Chairman Hackney stated that the committee substitute represented the best efforts of the Family Law Section of the State Bar.

Ms. Churchill was recognized for an explanation of the committee substitute. She said that the language of subsection 2 on page one had been rewritten to say that Article 19 of Chapter 28A is going to apply to all family lawyers dealing with equitable distribution after a death saying that they must comply with the estate law. She discussed the change in the time frame (from six months to three years) for filing any claims.

Representative Ross moved that it be adopted for the purpose of discussion. The motion carried.

Committee discussion followed. Representative Insko asked how parties would have to proceed if this bill is not enacted.

Chairman Hackney replied that if one did not have an equitable distribution claim pending at the time of death, the claim is lost. He said that this is a problem in cases where there is a great deal of dissension within the separation.

Representative Ross moved a favorable report for the House Committee Substitute and an unfavorable report for the Senate Committee Substitute. The motion carried, (Attachment XII).

The meeting adjourned at 10:40 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
TUESDAY MAY 13, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 394 – EQUITABLE DISTRIBUTION CLAIM SURVIVE DEATH SPOUSE/LIMIT
SENATOR RAND

SENATE BILL 449 – PRESUMPTION-DWI BLOOD WITHDRAWAL VALID
SENATOR QUEEN

SENATE BILL 539 – STATE BAR AMENDMENTS
SENATOR RAND

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dina DiMaio	NCBA
Wade Harrison	NCBA
Tom Lunsford	N.C. STATE BAR
Carolon Blakewell	"
John McMillan	MFAS
Matt Osborne	AOC
John Cyrus	NC State Treasurer
Tom Andrews	AOC
Bob Dorsett	NC State with

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 449
Judiciary II Committee Substitute Adopted 4/23/03

Short Title: Evidence - DWI Blood Withdrawal Valid. (Public)

Sponsors:

Referred to:

March 18, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY ADMISSIBLE EVIDENCE THAT THE PERSON WITHDRAWING BLOOD IN AN IMPAIRED DRIVING CASE IS A LICENSED PHYSICIAN, NURSE, OR AN OTHERWISE QUALIFIED PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1(c) reads as rewritten:

"(c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer shall furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications."

SECTION 2. This act becomes effective December 1, 2003.

SENATE BILL 449:
Presumption-DWI Blood Withdrawal Valid

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Queen
Date:	May 13, 2003	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 449 would clarify the type of evidence that may be introduced regarding the qualifications of the person who withdrew blood for chemical analysis for a DWI charge. Testimony by the charging officer or an affidavit by the person who withdrew the blood would be sufficient to constitute prima facie evidence as to those qualifications.***

CURRENT LAW: G.S 20-139.1(c) provides that when a charging officer has blood drawn for analysis , only a physician, registered nurse, or other qualified person may withdraw the blood sample.

BILL ANALYSIS: SB 449 provides that evidence regarding the qualifications of the person who withdrew a blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood and evidence of this nature shall be sufficient to be prima facie evidence regarding the person's qualifications.

Prima facie evidence is evidence that is sufficient on its face, unless challenged, to establish a given fact.

The act would become effective December 1, 2003.

*Staff Attorney Kory Goldsmith contributed substantially to this summary.

S449-SMSA-001

2003 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
S.B. 449 A BILL TO BE ENTITLED AN ACT TO CLARIFY ADMISSIBLE EVIDENCE THAT THE PERSON WITHDRAWING BLOOD IN AN IMPAIRED DRIVING CASE IS A LICENSED PHYSICIAN, NURSE, OR AN OTHERWISE QUALIFIED PERSON.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 539
Judiciary I Committee Substitute Adopted 4/2/03

Short Title: State Bar Amendments. (Public)

Sponsors:

Referred to:

March 26, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAW GOVERNING THE LIMITED PRACTICE OF OUT-OF-STATE ATTORNEYS-AT-LAW AND THE OPERATION OF THE COUNCIL AND DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-4.1 reads as rewritten:

"**§ 84-4.1. Limited practice of out-of-state attorneys.**

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of that state and in good standing therein, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the litigation. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

(1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.

(2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.

(3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until the final determination thereof, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly

admitted and licensed member of the Bar of North Carolina in good standing.

(4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.

(6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application."

SECTION 2. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

Subject to the superior authority of the General Assembly to legislate thereon by general law, and except as herein otherwise limited, the Council is hereby vested, as an agency of the State, with the authority to regulate the professional conduct of licensed attorneys. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists; determine whether a member is disabled; and formulate and adopt procedures for accomplishing these purposes. The Council or any committee thereof, including the Client Security Fund and the Disciplinary Hearing Commission or any committee thereof, shall have the authority to subpoena financial records of any licensed attorneys, attorneys whose licenses have been suspended, or disbarred attorneys, relating to any account into which client or fiduciary funds have been deposited. The Council may publish an official journal concerning matters of interest to the legal profession and may acquire, hold, rent, encumber, alienate, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council is authorized and empowered in its discretion to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes; and to do all things necessary in the furtherance of the purposes of this Article as are not prohibited by law."

SECTION 3. G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of ~~15~~ 20 members. ~~Ten~~ Twelve of these members shall be members of the North Carolina State Bar, and shall be appointed by the Council. The other ~~five~~ eight shall be citizens of North Carolina not licensed to practice law in this or any other state, ~~three~~ four of whom shall be appointed by the Governor, ~~one~~ two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and ~~one~~ two by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The Council shall designate one of its appointees as chair and another as vice-chair. The chair shall have actively practiced law in the courts of the State for at least 10 years. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The Council, the Governor, and the General Assembly respectively, shall appoint members to fill unexpired terms when vacancies are created by resignation, disqualification, disability or death, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chair may serve one additional three-year term in that capacity. No member of the Council may be appointed to the commission."

SECTION 4. This act becomes effective July 1, 2003.

SENATE BILL 539:
State Bar Amendments.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Rand
Date:	May 13, 2003	**Summary by:**	Susan L. Sitze*,
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 539 would amend the law governing operations of the North Carolina State Bar with regards to certain disciplinary matters. The bill would require disclosure of disciplinary actions taken in other states of attorneys licensed in other states who wish to appear in a single case in North Carolina. The bill also gives the Bar the authority to subpoena financial records of suspended and disbarred attorneys relating to accounts into which client or fiduciary funds were deposited. The bill expands the disciplinary hearing commission from 15 to 20 members.***

CURRENT LAW: Currently, an attorney licensed out-of-state may, on motion, be admitted to practice in a single case based on certain conditions including being subjected to the jurisdiction of the NC courts and the NC State Bar and that the attorney has associated an attorney licensed in NC on the case. The State Bar Council, the governing body of the NC State Bar, has the authority to subpoena records in disciplinary hearings. The current Disciplinary Hearing Commission of the NC State Bar consists of 15 members, 10 of who are members of the State Bar appointed by the Council, and 5 non-lawyers appointed by the Governor, Speaker and President Pro Tempore.

BILL ANALYSIS: Section 1 of the bill amends the section allowing out-of-state attorneys to be admitted to practice in NC on a single case by adding an additional condition that the attorney disclose all the attorney's disciplinary history.

Section 2 amends the powers of the State Bar Council to permit the Council, or any of its committees, including the Client Security Fund and the Disciplinary Hearing Commission, to subpoena financial records relating to any account into which client or fiduciary funds were deposited. This authority will apply to former attorneys whose licenses have been suspended or revoked, as well as licensed attorneys. Currently there is some question of the jurisdiction of the Council over former attorneys.

Section 3 expands the Disciplinary Hearing Commission of the NC State Bar from 15 members to 20 members. Two additional members will be appointed by the Council from members of the NC State Bar (currently 10 members). One additional member will be appointed by the Governor (currently 3 members). And one additional member will be appointed by each of the Speaker and the President Pro Tempore (currently 1 member a piece). Members of the Commission serve 3-year terms. The Disciplinary Hearing Commission conducts hearings on disciplinary actions brought against attorneys.

EFFECTIVE DATE: The bill becomes effective July 1, 2003.

*Staff Attorney Walker Reagan contributed substantially to this summary.
S539-SMSA-001

2003 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
S.B. 539 A BILL TO BE ENTITLED AN ACT AMENDING THE LAW GOVERNING THE LIMITED PRACTICE OF OUT-OF-STATE ATTORNEYS-AT-LAW AND THE OPERATION OF THE COUNCIL AND DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR,

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 394
Judiciary I Committee Substitute Adopted 4/14/03

Short Title: Equ. Dis. Claim Survive Death Spouse/Limit. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) Any claim for equitable distribution against the estate of the deceased spouse made after the death of a party must be filed with the estate of the deceased spouse in accordance with Article 19 of Chapter 28A of the General Statutes, or if no estate administration is opened, an action for equitable distribution must be filed within six months of the date of death.

(3) Any claim for equitable distribution against the surviving spouse made by the estate of the deceased spouse must be filed with the district court within six months of the date of death of the deceased spouse or be forever barred.

(4) The proper forum for disputed claims under this subsection shall be the district court.

(5) An action brought under this subsection shall be an action to determine what constitutes an asset of the deceased spouse's estate and shall constitute a claim of the seventh class under G.S. 28A-19-6."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital and divisible ~~property upon divorce.~~property.**"

SECTION 3. Article 19 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-19-19. Claims for equitable distribution.**

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20."

SECTION 4. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

SENATE BILL 394: Equitable Distribution Claim Survive Death Spouse/Limit.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 13, 2003	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Co-Counsel

SUMMARY: The bill would amend the equitable distribution and estate administration laws to allow a claim for equitable distribution to survive the death of one of the spouses where the parties had lived separate and apart prior to the death.

CURRENT LAW: Currently, G.S. 50-20(l) provides that a pending action for equitable distribution survives the death of one of the spouses.

BILL ANALYSIS:

Section 1. The bill would amend the current G.S. 50-20(l) to extend the current law to allow a claim for equitable distribution to be filed after the death of one of the spouses if the spouses where living separate and apart at the time of death. The claim against the estate is subject to the same filing and notice requirements with the personal representative of the deceased spouse's estate as all other creditors of the estate. If no estate is opened, then the equitable distribution action must be filed within six (6) months of the date of death. Likewise, if the estate is bringing an action for equitable distribution, it must be filed within six (6) months of the date of death. The district court has jurisdiction over the actions. The equitable distribution actions acre to determine assets of the estate and are treated for payment purposes as all other general claims against the estate. Under Article 19 of Chapter 28A of the General Statutes, a creditor has to file a notice of claim with the personal representative within 90 days of the date the notice to creditors is delivered or published. If the personal representative rejects the claim, the surviving spouse has to bring an action against the estate within three months after the date of the notice of the rejectment.

Section 2. The bill would change the catch line for the General Statutes section being amended by Section 1 of the bill.

Section 3. The bill would a new section to the estate administration law to modify the normal estate administration procedure as it relates to equitable distribution actions. G.S. 28A-19-5 (Contingent claims) and G.S. 28A-19-7 (Satisfaction of claims other than by payment) do not apply to these actions. The personal representative is permitted to negotiate a settlement of the equitable distribution claim on behalf of the estate. Unless all the parties agree to another dispute resolution process, the personal representative may bring an action for equitable distribution in accordance with the requirements and limitations set forth in Section 1 of the bill.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply to actions pending or filed on or after that date.

*Walker Reagan contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 394
Judiciary I Committee Substitute Adopted 4/14/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S394-CSST-40 [v.1]

5/13/2003 9:08:09 AM

Short Title: Equ. Dis. Claim Survive Death Spouse/Limit. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-20(l) reads as rewritten:

"(l) ~~A pending action for equitable distribution shall not abate upon the death of a party.~~

(1) A claim for equitable distribution, whether an action is filed or not, survives the death of a spouse so long as the parties are living separate and apart at the time of death.

(2) The provisions of Article 19 of Chapter 28A of the General Statutes shall be applicable to a claim for equitable distribution against the estate of the deceased spouse.

(3) Any claim for equitable distribution against the surviving spouse made by the estate of the deceased spouse must be filed with the district court within three years of the date of death of the deceased spouse or be forever barred."

SECTION 2. The catch line for G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital and divisible ~~property upon divorce.~~property.**"

SECTION 3. Article 19 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-19-19. Claims for equitable distribution.**

(a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for equitable distribution.

(b) The personal representative may enter into an agreement, in writing, with a claimant providing for distribution of marital or divisible property, or both, in a manner deemed by the personal representative and the claimant to be equitable. The agreement shall be filed in the clerk's office where the letters were granted and shall be a lawful voucher for the personal representative. The same may be impeached in any proceeding against the personal representative for fraud therein.

(c) Unless the claim for equitable distribution has been referred as provided in G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file an action with the district court for distribution of marital or divisible property in accordance with the provisions of G.S. 50-20.

(d) A claim for equitable distribution shall constitute a claim of the seventh class under G.S. 28A-19-6."

SECTION 4. This act is effective when it becomes law and applies to actions pending or filed on or after that date.

2003 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
S.B. 394 A BILL TO BE ENTITLED AN ACT ALLOWING A CLAIM FOR EQUITABLE DISTRIBUTION TO SURVIVE THE DEATH OF A SPOUSE WHEN THE PARTIES ARE LIVING SEPARATE AND APART AT THE TIME OF DEATH AND THE CLAIM IS TIMELY FILED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 15, 2003

Minutes

The House Judiciary I Committee met on Thursday, May 15, 2003 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 Capps, Daughtry, Harrell, Insko, Miller, Ross and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Apodaca was recognized to explain Senate Bill 619, AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE, (Attachment III). He said that the bill would make it mandatory that blood results are sent to the Clerk of Superior Court. This is in addition to being sent to the District Attorney and the charging officer.

Ms. Susan Sitze, Committee Counsel, was recognized for additional background and comment. She said that that the bill provides for an automatic 30-day civil revocation for anyone who is charged with an implied consent offense which is usually a DWI offense, and one of the following conditions are met: 1) willful refusal to submit to chemical analysis; 2) an alcohol concentration of 0.08 or more; 3) an alcohol concentration of 0.04 and driving a commercial vehicle; 4) or is under the age of 21 and has any alcohol content. She said that the 30-day revocation is currently part of the law. She said that following a blood analysis, it often takes a while for the results to come back and the law enforcement officer must hold onto his report until he receives the blood analysis. This can sometimes be a long period of time. She said that the bill would provide that the blood analysis be sent directly to the clerk. The law enforcement officer would be able to file his part of the report as soon as the charge is made, and not have to wait to complete it after receiving the blood analysis. The blood analysis would also still be sent to the District Attorney. The bill simply adds the clerk to the list of those receiving the analysis. A copy Ms. Sitze's bill analysis is attached, (Attachment IV).

Representative Daughtry moved that the bill be given a favorable report.

Chairman Hackney asked if there was any cost associated with the bill. Ms. Sitze replied that the bill itself did not generate any cost, but that the blood analysis has a charge of about $300. She added that the SBI and DMV were in support of the bill. Ms. Sitze said that the SBI would have the responsibility of sending the report to the proper people.

Upon vote of the members, the motion passed, (Attachment V).

Representative Crawford was recognized for an explanation of House Bill 471, AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH RECENTLY ADOPTED FEDERAL REGULATIONS CONCERNING THE EFFECT OF VIOLATION OF RAILROAD CROSSING SAFETY AND OTHER STATE LAWS ON COMMERCIAL DRIVERS LICENSES, AND REQUIRING A NEW "S" ENDORSEMENT FOR PERSONS OPERATING SCHOOL BUSES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, (Attachment VI). He said that the bill brings the state into compliance with federal mandates concerning the effect of certain traffic violations on persons holding commercial drivers licenses, and requires a new "S" school bus driver endorsement.

Ms. Sitze called attention to the draft of the federal requirement certification that is required by statute that had been distributed to the members of the committee, (Attachment VII). She said that every provision of the bill is required by federal law and does not go beyond that requirement. She briefly discussed each section of the bill. Her review is outlined in the bill analysis that is attached, (Attachment VIII).

Ms. Debbie Jones, Hearing Officer, Division of Motor Vehicles, and Mr. Will Williamson, CDL Director, Division of Motor Vehicles, commented briefly on the bill.

Representative Insko moved for a favorable report.

Ms. Sitze pointed out that the bill will need to be re-referred to the Committee on Finance.

Representative Insko revised the motion for a favorable report and be re-referred to the Committee on Finance. The motion carried, (Attachment IX).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE
THURSDAY MAY 15, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 471 – CDL CHANGES
REPRESENTATIVE CRAWFORD

SENATE BILL 619 – DWI BLOOD TEST RESULT – DIRECTLY TO CLERK
SENATOR APODACA

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	Gov office
Matt Osborne	AOC
Debbie Jones	DMV
Will Williamson	DMV
Sharon Matthews	DOT - DMV
Gary Harris	NC Petroleum Marketers
Julie Allen	NC Statewatch
Jim Drennan	Dept of Corr -
Doug Cassiter	NCSTA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 619
Judiciary II Committee Substitute Adopted 4/16/03

Short Title: DWI Blood Test Result-Directly to Clerk. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. – When a clerk receives a properly executed report under subdivision (d) (3) and the person named in the revocation report is not present before the clerk, the clerk shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. For purposes of this subsection, a properly executed report under subdivision (d)(3) may include a sworn statement by the charging officer along with an affidavit received directly by the Clerk from the chemical analyst. If he determines that there is such probable cause, he shall mail to the person a revocation order by first-class mail. The order shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. If the person has no pending

offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Forty-five days from the time:

a. The person's drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order shall deposit it with the clerk within three days of the surrender."

SECTION 2. G.S. 20-139.1(c) reads as rewritten:

"(c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer shall furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 619:
DWI Blood Test Result - Directly to Clerk

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Tom Apodaca
Date:	May 15, 2003	**Summary by:**	Susan L. Sitze
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 619 provides that a blood analysis report sent directly to the Clerk of Superior Court may be used as the basis for civil revocation of a drivers license.***

CURRENT LAW: G.S. 20-16.5 provides for an automatic 30 day civil revocation of a person's drivers license if that person is charged with an implied consent offense and one of the following four conditions are met:

1. The person willfully refuses to submit to chemical analysis;
2. The person has an alcohol concentration of 0.08 or more within a relevant time after the driving;
3. The person has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; OR
4. The person has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

When a blood analysis has been done, the revocation report is filed with the Clerk of Superior Court, since the analysis results are not generally available at the person's initial appearance. The Clerk then issues the civil revocation after finding probable cause based on the report.

Currently, the blood analysis is sent to the District Attorney and to the charging officer. The charging officer then files his report with the analysis results attached. This often results in either a long time period before the revocation reports are filed, or in some instances, a revocation report never being filed simply because the charging officers forgets by the time they receive the analysis results.

BILL ANALYSIS: Section 1 of the bill authorizes the clerk to issue a revocation order based on the charging officers sworn statement and an affidavit received directly by the clerk from the chemical analyst. This will allow the charging officer to quickly submit their sworn statement without having to wait for the chemical analysis results to come back. Additionally, the clerk will be able to proceed with the revocation procedure as soon as the chemical analysis results are received.

Section 2 of the bill directs the chemical analyst who analyzes the blood to complete an affidavit and provide that affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.

The act is effective when it becomes law.

S619-SMSA-001

2003 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
S.B. 619 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A BLOOD ANALYSIS REPORT SENT DIRECTLY TO THE CLERK OF SUPERIOR COURT MAY BE USED AS THE BASIS FOR THE CIVIL REVOCATION OF A DRIVERS LICENSE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 2

HOUSE BILL 471*
Committee Substitute Favorable 4/30/03

Short Title: CDL Changes. (Public)

Sponsors:

Referred to:

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH RECENTLY ADOPTED FEDERAL REGULATIONS CONCERNING THE EFFECT OF VIOLATION OF RAILROAD CROSSING SAFETY AND OTHER STATE LAWS ON COMMERCIAL DRIVERS LICENSES, AND REQUIRING A NEW "S" ENDORSEMENT FOR PERSONS OPERATING SCHOOL BUSES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. – A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.
2. A determination that a person is responsible for an infraction, including a no contest plea.
3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
4. A third or subsequent prayer for judgment continued within any five-year period.
5. For the purpose of disqualification only, a prayer for judgment continued, when the offense occurs in a commercial vehicle or the offender holds a commercial drivers license.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.
2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

SECTION 2. G.S. 20-4.01(41a) reads as rewritten:

"(41a) Serious Traffic Violation. – A conviction of one of the following offenses when operating a commercial motor vehicle:

a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.
f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported."

SECTION 3. G.S. 20-17.4 is amended by adding a new subsection to read:

"(k) Disqualification for Railroad Grade Crossing Offenses. – Any person convicted of violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

(1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.
(2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.
(3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection."

SECTION 4. G.S. 20-37.12 is amended by adding a new subsection to read:

"(f) A person shall not be convicted of failing to carry a commercial drivers license if, by the date the person is required to appear in court for the violation, the person produces to the court a commercial drivers license issued to the person that was valid on the date of the offense."

SECTION 5. G.S. 20-37.16 reads as rewritten:

"**§ 20-37.16. Content of license; classifications and endorsements; fees.**

(a) A commercial drivers license must be marked "Commercial Drivers License" or "CDL" and must contain the information required by G.S. 20-7 for a regular drivers license.

(b) The classes of commercial drivers licenses are:

(1) Class A CDL – A Class A commercial drivers license authorizes the holder to drive any Class A motor vehicle.

(2) Class B CDL – A Class B commercial drivers license authorizes the holder to drive any Class B motor vehicle.

(3) Class C CDL – A Class C commercial drivers license authorizes the holder to drive any Class C motor vehicle.

(c) Endorsements. – The endorsements required to drive certain motor vehicles are as follows:

Endorsement	Vehicles That Can Be Driven
H	Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
S	School bus
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years.

(d) The fee for a Class A, B, or C commercial drivers license is ten dollars ($10.00) for each year of the period for which the license is issued. The fee for each endorsement is one dollar and twenty-five cents ($1.25) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to ~~a person whose license is restricted to driving a school bus or school activity bus or to~~ employees of the Driver License Section of the Division who are designated by the Commissioner.

(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also

waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

(1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military purposes.

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental functions.

(3) A farm vehicle that meets all of the following criteria:

a. Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm use.

b. Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a farm.

c. Is not used in the operations of a for-hire motor carrier.

d. Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation."

SECTION 6. G.S. 20-37.16 is amended by adding a new subsection to read:

"(c1) The test for an S endorsement may be waived by the Division for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the requirements of this subsection. An applicant for a waiver under this subsection shall verify that, during the two-year period immediately prior to application for an S endorsement, the applicant met all of the following requirements:

(1) The applicant held a valid commercial drivers license with a passenger vehicle endorsement to operate a school bus representative of the group the applicant will be driving.

(2) The applicant did not have the applicant's drivers license or commercial drivers license suspended, revoked, or cancelled or the applicant was not disqualified from operating a commercial motor vehicle.

(3) The applicant was not convicted of a State law offense that corresponds to the list of disqualifying offenses in 49 C.F.R. § 383.51(b) while operating a commercial motor vehicle or of any offense in a noncommercial motor vehicle that would be a disqualifying offense under 49 C.F.R. § 383.51(b) if committed in a commercial motor vehicle.

(4) The applicant was not convicted of more than one of the serious traffic violations listed and defined in G.S. 20-4.01(41a) while operating any type of motor vehicle.

(5) The applicant was not convicted of a violation of State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident.

(6) The applicant was not convicted of any motor vehicle traffic violation that resulted in an accident.

(7) The applicant was regularly employed as a school bus driver, operated a school bus representative of the group the applicant seeks to drive, and provides evidence of that employment."

SECTION 7. Sections 3, 5, and 7 of this act become effective October 1, 2003. Section 6 of this act becomes effective October 1, 2003, and expires September 30, 2005. The remainder of this act becomes effective January 1, 2005.

Session 2003

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

House Bill 471
CDL Changes

Bill Primary Sponsor(s):	Representative Crawford	Enter PCS name
Relevant Federal Law:	*49 C.F.R. Parts 350, 383, 384 and 390*	
☒ Required by or Necessary for Compliance with Federal Law		☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law		☒ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

On July 31, 2002, the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation issued amended regulations concerning commercial drivers license (CDL) holders. While North Carolina is already in compliance with many of the new regulations, there are several areas addressed by this bill where North Carolina is not currently in compliance.

The new regulations which North Carolina is not currently in compliance with are:

- *49 C.F.R. §384.226 which prohibits states from "masking" a conviction of a CDL driver for any traffic related violation in any type of vehicle.*
- *49 C.F.R. §383.51 which requires that a CDL holder be disqualified from driving a commercial vehicle for a specified period of time for "serious traffic violations" and also for certain railroad crossing offenses.*
- *49 C.F.R. §383.5 which provides that a person may not be convicted of failing to carry a CDL if, by the court date, the person produces a CDL that was valid at the time of the offense.*
- *49 C.F.R. §383.93 and §383.123 which require a new "S" school bus endorsement.*

Failure to comply with the new federal regulations could result in the loss of Federal aid highway funds.

COMPLIANCE CONSIDERATIONS

House Bill 471 would bring North Carolina into compliance with the new federal regulations.

Section 1 of the bill amends North Carolina statutes to include in the definition of "conviction", for purposes of disqualification only, a PJC (Prayer for Judgment Continued) for offenses occurring in a commercial motor vehicle or offenses committed by a person with a CDL. This section complies with 49 C.F.R. §384.226.

Section 2 of the bill amends North Carolina statutes to include in the definition of "serious traffic violation" those offenses required by federal regulations but not currently included in the North Carolina statute. This section complies with 49 C.F.R.§383.51 (Table 2).

Section 3 of the bill amends North Carolina statutes to provide for disqualification for specific periods of time for certain railroad grade crossing offenses required by federal regulations. This section complies with 49 C.F.R. §383.51 (Table 3).

Section 4 of the bill amends North Carolina statutes to provide that a person shall not be convicted of failing to carry a CDL if, by the court date, the person produces a CDL that was valid at the time of the offense. This section complies with 49 C.F.R. §383.5.

Sections 5 and 6 of the bill amend North Carolina statutes to require a new S school bus endorsement and to grandfather currently licensed school bus drivers if they meet certain requirements by October 1, 2005. These sections comply with 49 C.F.R. §383.93 and §383.123.

REVIEW AND APPROVAL

Prepared By: _____ **Date:** _____
Susan L. Sitze
Title of Preparer

Approved By: _____ **Date:** _____
Terrence D. Sullivan
Director of Research

HOUSE BILL 471: CDL Changes

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Representative Crawford
Date:	May 15, 2003	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 471 makes several changes to North Carolina law required by federal regulation concerning the effect of certain traffic violations on persons holding commercial drivers licenses, and requires a new "S" school bus driver endorsement.***

CURRENT LAW: On July 31, 2002, the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation issued amended regulations concerning commercial drivers license (CDL) holders. In order to comply with these new federal regulations, North Carolina law would have to be amended as described below. Failure to comply with these new federal regulations could result in the loss of Federal–aid highway funds (49 C.F.R. §384.401).

BILL ANALYSIS:

Section 1

Federal regulation 49 C.F.R. §384.226 prohibits states from "masking" a conviction of a CDL driver for any traffic related violation in any type of vehicle. To comply with this regulation, Section 1 of the PCS amends NC law to include in the definition of "conviction", for purposes of disqualification only, a PJC (Prayer for Judgment Continued) for offenses occurring in a commercial motor vehicle or offenses committed by a person with a CDL. ...applies to CDL holders - ... applies to offenses occurring in both in commercial vehicles and in regular vehicles if they are a commercial drivers license holder -

Section 2

Federal regulation 49 C.F. R. § 383.51 (Table 2) requires disqualification from driving a commercial motor vehicle for specified time periods for conviction of listed serious traffic violations. Section 2 of the PCS amends NC law to include those offenses in NC's definition of "serious traffic violations" when driving a commercial motor vehicle.

Section 3

Federal regulation 49 C.F.R. §383.51 (Table 3) requires disqualification from driving a commercial motor vehicle for violation of certain railroad crossing offenses. Section 3 of the PCS amends NC law to require this disqualification.

Section 4

Federal regulation 49 C.F.R. §383.5 provides that a person shall not be convicted of failing to carry a CDL if, by the court date, the person produces a CDL that was valid at the time of the offense. Section 4 of the PCS amends NC law to conform to this requirement.

Sections 5 and 6

Federal regulation 49 C.F.R. §383.93 and §383.123 require a new S school bus endorsement. Prior to October 1, 2005, states are authorized to grandfather currently licensed school bus drivers. Sections 5 and 6 of the PCS amend NC law to conform to this requirement.

EFFECTIVE DATE: Section 3 (requiring CDL disqualification for railroad crossing offenses), Section 5 (requiring new S school bus endorsement), and Section 7 (effective date clause) of this act would become effective October 1, 2003. Section 6 (school bus driver grandfather clause) would become effective October 1, 2003, and expire September 30, 2005 (as required by federal regulations). The remaining sections of this act would become effective January 1, 2005.

**Giles Perry contributed substantially to this summary.*

H471-SMSA-003

2003 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. 471 A BILL TO BE ENTITLED AN ACT TO BRING STATE LAW INTO COMPLIANCE WITH RECENTLY ADOPTED FEDERAL REGULATIONS CONCERNING THE EFFECT OF VIOLATION OF RAILROAD CROSSING SAFETY AND OTHER STATE LAWS ON COMMERCIAL DRIVERS LICENSES, AND REQUIRING A NEW "S" ENDORSEMENT FOR PERSONS OPERATING SCHOOL BUSES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 20, 2003

Minutes

The House Judiciary I Committee met on Tuesday, May 20, 2003 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, Capps, Insko, Miller, Ross, Sexton and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Shubert was recognized for an explanation of Senate Bill 708, AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF VOLUNTEER FIRE DEPARTMENTS, (Attachment III). She said that the bill was introduced at the request of the Fire Chief's Association of Union County, the Union County Sheriff and the County Commissioners. She said that current law does not permit the volunteer fire departments to conduct criminal background checks and the local government officials feel it would be good to be able to screen if they thought there was some need to do so. She said that she knew of no opposition to the bill.

Ms. Susan Sitze, Committee Counsel, was recognized to comment. She said that the background check would be sent to the local Homeland Security agency. She added that every county now has such a position. This position is linked to Crime Control and Public Safety as a requirement of the federal government. She said that the background checks would not go directly to the volunteer fire departments because federal law requires that it go to a governmental entity. The governmental appointee would review the record and determine if any crime might be existent, but the record, itself, would not go to the volunteer fire department. A copy of the bill analysis is attached to the minutes, (Attachment IV).

Representative West offered an amendment, (Attachment V), that would remove "volunteer" from the bill and have the bill apply to all fire departments. He moved adoption of the amendment.

Representative Miller asked if the bill would be mandatory or optional and who would assume the cost for the background checks.

Chairman Hackney responded that the background checks would be optional. Ms. Sitze said that the applicant would be required to pay for the check, unless the fire department agrees to pay for it.

Representative Capps asked if there was a need for a definition of "Homeland Security agent" in the bill.

Ms. Sitze said that she had inquired about the need for such a definition, but on short notice of the scheduling of the bill had been unable to contact the appropriate person at Crime Control and Public Safety to determine whether it was needed. She said that she had spoken with Linda Attarian, who was in the Research Division and had worked on the bill when it was handled in the Senate, and she felt that a definition was not necessary and that it would be clear who that person was in each county.

The motion for adoption of the amendment was before the committee. The amendment was adopted.

Representative West moved a favorable report for a House committee substitute incorporating the amendment and unfavorable to Senate bill. The motion carried, (Attachment VI). A copy of the new House committee substitute is attached, (Attachment VII).

Senator Purcell was recognized for an explanation of Senate Bill 877, AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES ACT, (Attachment VIII). A proposed House committee substitute was distributed, (Attachment IX), and Representative Insko moved that it be adopted for the purpose of discussion. The motion carried. Senator Purcell said that North Carolina has made much progress in the area of child care, but that laws dealing with illegal child care facilities are still inadequate. He said that in 2001, there were reports of 273 child care programs being operated illegally, with 89 verified as illegal and 12 arrests warrants were issued. He called attention to a handout, (Attachment X) which described some of the examples of illegal child care providers that have been investigated by the Division of Child Development. He said that the General Assembly needs to guarantee to the best of its ability that North Carolina's young children are protected. He added that without stiffer penalties, the Division of Child Development is handicapped in enforcing the laws.

Ms. Susan Sitze, Committee Counsel, was recognized to offer a section-by-section review of the bill pointing out the differences between the Senate bill and the committee substitute and the differences between the Senate bill and the House bill that was considered earlier in the session. She said that the only difference in the committee substitute and the Senate bill was a rewording to clarify the intent of the bill. She said that the original House version had been different, but that the committee had considered a committee substitute rather than the original bill and the committee substitute was identical to what came to the committee from the Senate. She reviewed the provisions of the bill. A copy of her bill analysis is attached, (Attachment XI).

Ms. Roz Savitt, representing the North Carolina Child Care Coalition, spoke in support of the bill.

Ms. Peggy Ball, Director, Division of Child Development, spoke in support of the bill.

Representative Capps asked staff to comment on the exclusions that are included in the bill.

Ms. Sitze called attention to a handout, (Attachment XII). The exclusions include arrangements where the children are all related and there are no more than two additional children in care that are not related. Also excluded, are recreational programs operating for less than four consecutive months during the year, special activities such as dance classes, music lesson, horseback riding, etc, drop-in, or short-term care provided while parents participate in activities that not employment related. Additional arrangements that are not considered as child care are listed in the handout.

Representative Capps stated that he understood the need for the bill and that he supported the penalties. He noted that he had concern regarding the training requirements.

Representative Ross noted concern of the guidelines in the bill regarding someone having three or more children for more than four hours per day on two consecutive days for pay. She noted that if these people did not comply with the provisions of the bill, they could be charged as a felon. She expressed concern for teenagers who baby-sit children saying that the definition encompasses them and that she had a concern about criminalizing behavior that isn't otherwise criminal.

Ms. Ball responded that the sixteen-year-old babysitter would not be defined as a child care facility. She said the situation would have to be done on a regular basis to be considered child care.

Ms. June Locklear, Chief, Regulatory Services Section, Department of Health and Human Services, said that "regular basis" is defined in the statutes.

After lengthy discussion, Representative Alexander moved a favorable report for the House committee substitute, unfavorable as to Senate committee substitute. The motion carried, (Attachment XIII).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
TUESDAY MAY 20, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 708 – VOLUNTEER FIRE DEPARTMENT CRIMINAL BACKGROUND CHECKS
SENATOR SHUBERT

SENATE BILL 877 – ILLEGAL CHILD CARE FACILITIES
SENATOR PURCELL

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 20, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LS Peggy Ball	Director DCD DHHS
Jeane Rochelle	Chief reg. dep. secty DHHS
Paula McInnis	NC DHHS
Roz Sawicki	NC Child Care Coalition
John Phelps	NCLM
NANCY GILBERT	SIERRA CLUB
Patricia Roeren	NCACC
Fran Cockman	NC state Watch
BP Diana Levine	NAACP
B Paige Johnson	Planned Parenthood
BRIAN LEWIS	" "

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 708
Judiciary II Committee Substitute Adopted 4/23/03

Short Title: Volunteer Fire Dept. Crim. Background Checks. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF VOLUNTEER FIRE DEPARTMENTS.

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:

"**§ 114-19.12. Criminal history record checks of applicants to volunteer fire departments.**

(a) Definitions. – As used in this section, the term:

(1) "Applicant" means an applicant for a paid or volunteer position with a volunteer fire department in a unit of local government.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a volunteer fire department. The crimes include, but are not limited to, criminal offenses as 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,

SENATE BILL 708:
Volunteer Fire Dept. Crim. Background Checks.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Shubert
Date:	May 20, 2003	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 708 would authorize local Homeland Security agencies to request criminal background checks on any applicant for a paid or volunteer position with a volunteer fire department. The check may be conducted only if the applicant consents to the check. A refusal to consent is considered a withdrawal of the application***

The Department of Justice may charge a reasonable fee for conducting these checks.

The local Homeland Security agency that receives the information must keep information from the record check confidential. If it is not kept confidential, the Department of Justice may refuse to provide further criminal record checks to agency.

The bill is effective when it becomes law.

CURRENT LAW: Criminal background checks are authorized for the following: school personnel; providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled; foster and adoptive parents; employees and job applicants with the Departments Health and Human Services and Juvenile Justice and Delinquency Prevention; applicants for volunteers for the McGruff House Program; nursing homes, adult care homes, home care agencies, area mental health, developmental disabilities, and substance abuse services authorities; and applicants for a variety of licenses (such as attorneys, nurses, auctioneers; mortgage bankers, physicians, realtors, etc.).

**Robin Johnson contributed substantially to this summary.*

S708-SMSA-001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT V**

(Please type or use ballpoint pen)

463

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 708 2nd editin Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.)) Klest
Sen.)

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

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "VOLUNTEER"

4

5 and on page 1, line 11 by deleting "volunteer"

6

7 and on page 1, line 15 by deleting "volunteer"

8

9 and on page 2, line 34 by deleting "volunteer"

10

11 and on page 3, line 5 by deleting "volunteer"

12

13 and on page 3, line 10 by deleting "volunteer"

14

15 and on page 1, line 7 by deleting "volunteer"

16

17

18

19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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
S.B. 708 A BILL TO BE ENTITLED AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF VOLUNTEER FIRE DEPARTMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 708
Judiciary II Committee Substitute Adopted 4/23/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S708-PCS35287-SA-19

Short Title: Fire Dept. Crim. Background Checks. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF FIRE DEPARTMENTS.

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:

"**§ 114-19.12. Criminal history record checks of applicants to fire departments.**

(a) Definitions. – As used in this section, the term:

(1) "Applicant" means an applicant for a paid or volunteer position with a fire department in a unit of local government.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as 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, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as 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) When requested by a local Homeland Security agency, the North Carolina Department of Justice may provide to the requesting agency an applicant's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State 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 local Homeland Security agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the local Homeland Security agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the local Homeland Security agency receives through the checking of the criminal history is privileged information and for the exclusive use of that agency.

(d) If the applicant's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the person from a current position with the local fire department. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security agency in determining whether the position shall be denied:

(1) The level and 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 duties of the person;

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and

(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire department may deny the applicant the position or dismiss an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from the position.

(f) The local fire department may extend a conditional offer of the position pending the results of a criminal history record check authorized by this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 3

SENATE BILL 877
Judiciary I Committee Substitute Adopted 4/23/03
Third Edition Engrossed 4/29/03

Short Title: Child Care Facilities/Penalties. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 110-103 reads as rewritten:

"**§ 110-103. Criminal penalty.**

(a) Any person who violates the provisions of G.S. 110-98 ~~through G.S. 110-99 or G.S. 110-102~~ shall be guilty of a Class 1 ~~misdemeanor, except that any person operating a family child care home as defined in G.S. 110-86(3) who violates the provisions of G.S. 110-98 through G.S. 110-99 or G.S. 110-102 shall be guilty of a Class 3 misdemeanor.~~ misdemeanor. Violations of G.S. 110-98(2), 110-99(b), 110-99(c), and 110-102 are exempted from the provisions of this subsection.

(b) Any person who operates a child care facility and who:

(1) Willfully violates the provisions of G.S. 110-99(a), or

(2) Willfully violates the provisions of this Article while providing child care for three or more children, for more than four hours per day on two consecutive days, is guilty of a Class I felony.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, is guilty of a Class H felony.

(d) Any person who violates subsection (a) of this section, and has a prior conviction for violating subsection (a), shall be guilty of a Class H felony."

SECTION 2. G.S. 110-99 reads as rewritten:

"**§ 110-99. ~~Display~~ Possession and display of license.**

(a) It shall be unlawful for a child care facility to operate without a current license authorized for issuance under G.S. 110-88.

~~(a)~~(b) Each child care facility shall display its current license in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe

any rating which may appear on the license. Any license issued to a child care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Secretary in the event that the license is revoked or suspended, or in the event that the rating is changed.

~~(b)~~(c) A person who provides only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall notify the Department that the person is providing only drop-in or short-term child care. Any person providing only drop-in or short-term child care as described in G.S. 110-86(2)(d), excluding drop-in or short-term child care provided in churches, shall display in a prominent place at all times a notice that the child care arrangement is not required to be licensed and regulated by the Department and is not licensed and regulated by the Department."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 877

Judiciary I Committee Substitute Adopted 4/23/03
Third Edition Engrossed 4/29/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S877-CSSA-18 [v.1]

5/19/2003 4:12:36 PM

Short Title: Child Care Facilities/Penalties. (Public)

Sponsors:

Referred to:

April 3, 2003

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(b) It shall be a Class I felony for any person who operates a child care facility to:

(1) Willfully violate the provisions of G.S. 110-99(a), or

(2) Willfully violate the provisions of this Article while providing child care for three or more children, for more than four hours per day on two consecutive days.

(c) Any person who violates the provisions of this Article and, as a result of the violation, causes serious injury to a child attending the child care facility, shall be guilty of a Class H felony.

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SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

Examples of Illegal Child Care Providers

A. Cases with Criminal Warrants of Illegal Child Care

1. **Flagrant Violation of Law and Death of Child** *(prompted Kaitlyn's Law)*
In Alamance County, a five-month-old died while in an illegal family child care home. SIDS was listed as the cause of death. Upon investigation it was determined that the provider had administered a generic brand of Benedryl to the child. This provider had been investigated three times before based on reports of illegal child care. There had been a previous SIDS death in this home that was never reported to the county Dept. of Social Services or state Division of Child Development. An arrest warrant was issued. The provider pled guilty and was sentenced to 120 days imprisonment.

2. **Flagrant Violation of Law and Endangerment of Children**
A report was received from county Department of Social Services of a possible illegal facility. A substantiation of neglect was confirmed. Division of Child Development consultants investigated the home and found 12 children ages one to eight-years old in care. Transportation was being provided in a personal vehicle with capacity of seven people. The consultant witnessed 10 preschoolers, two teenagers and the driver climbing into the seven-passenger mini-van and driving away. The consultants talked with the adult in the home describing in detail the applicable laws and child care rules. The provider said that she was aware of the rules because she had been a registered provider before and her certificate was taken away at a different address. She stated that all the children were related to her but failed to provide the documentation of their relationship as requested by the consultants.

3. **Intent to Commit Fraud**
The Child and Adult Food Care Program (CAFCP), a federal meals reimbursement program, received a fraudulent family child care home license with a CAFCP application. The illegal provider reported having a capacity of 25 children on the CAFCP application in order to receive meal expense reimbursement. The Division of Child Development verified that she was caring illegally for 12 children.

4. **Penalty not Great Enough to Merit Court's Attention**
In another case an adult family member in an illegal home threatened the consultants if they came again to investigate. The local police escorted the consultants on the next visit to observe the illegal care. A criminal summons was issued. A court date was set for the provider to appear. The District Court Judge acknowledged the Division of Child Development staff and the illegal provider in the courtroom and indicated that this was a low-level misdemeanor and a waste of his time and dismissed the case.

5. **Provider Continually Violates Law After Repeated Arrests and Convictions**
In another situation, a provider was reported by the county Department of Social Services to be caring for preschool-age children without being licensed. Six to seven preschoolers, ages one to five-year old, were in care. The Division of Child Development consultant advised the provider about the mandate to be licensed. Further investigation by the Division determined that the provider was operating with at least three different names in different locations. None of these facilities were licensed. The provider transported children from house to house during the day to avoid detection. Over a two-year period, three criminal arrest warrants each under different names were served on the provider. At trial, she pled guilty on the charges and received a 30 day suspended sentence plus 18 to 24 months of supervised probation and was ordered to not to

provide child care without complying with the licensing law. Even so, on two occasions since being sentenced, she was found providing care without being licensed.

6. **Provider Neglect and Drug Possession**
The county Department of Social Services contacted the Division of Child Development consultant to report an illegal home provider was reported growing marijuana and selling it from the house, with preschool age children playing in the yard. The provider's nine-year-old child was often left to care for the children while the provider left the house. A neighbor of the provider reported to police that the provider and her husband frequently drove away from the home in a pick up truck with the "six little kids" in the back bed of the truck. The provider's husband was charged with possession and selling of drugs and pled guilty of a lesser charge of simple possession. The provider stopped caring for children after she was charged with neglect of her own children.

7. **Provider Violates Law with Intent and Endangers Children with Medication**
A licensed foster parent was investigated for administering a medication, "Terpin Hydrate Elixer," which has an alcohol content of 41.5%, without the parent's permission. This person was found to be caring for at least five children during the investigation. The administration of the medication to a two-year-old along with leaving children unsupervised was verified. An advertisement was found in the local newspaper for the "licensed center" while an assault charge was pending in County District Court.

8. **Risk of Serious Injury not Reflected in Penalty**
Frequently, illegal providers have been observed transporting too many children for the capacity of the vehicle. In one illegal situation, the consultants investigating found 15 children in a mini van, loaded in the seats, the aisles and cargo space. The provider received a sentence of six to twelve-month unsupervised probation and payment of court costs.

9. **Provider Intentionally Continues to Violate Law**
A county provider's child care home license was terminated by the Division of Child Development for failure to comply with requirements for adequate care. An investigation of domestic violence in the home prompted the social worker to visit. At that time, the provider was caring for children without being licensed. After this was reported to the Division of Child Development, visits on four separate occasions found children were in care in the unlicensed facility. The provider said she knew she was illegal, but that she was not going to stop caring for children. She was issued a criminal summons and two criminal arrest warrants. She was convicted of operating an illegal child care facility and was sentenced to 12 months of unsupervised probation. It was further revealed that she had been convicted of forgery and was on supervised probation at the time of her arrest for operating an illegal child care facility. Her probation has been increased to intensive supervised probation until June 2003. Since her conviction of operating an illegal child care facility, she has once again been observed providing illegal care. The county Department of Social Services continues their domestic violence investigation with ongoing visits.

Examples of Illegal Child Care Providers

10. Provider Operates Illegally After License Terminated

Over the period of a year, reports of five abuse/neglect incidents alleging that children sustained broken bones, bruises, and that a pacifier became lodged in an infant's throat were investigated by county Department of Social Services in the same home. Child abuse was not substantiated because of insufficient evidence that the injuries occurred in facility. The provider was operating an illegal child care arrangement. An arrest warrant was issued and the provider pled guilty at trial. She was given a sentence of 12 months unsupervised probation. This provider had operated a licensed home in the early 1990's. Her license had been terminated because of inadequate care and inappropriate discipline.

11. Provider Operates Illegally After License Terminated; Sexual Abuse Incident

A report alleging that child sexual abuse had occurred in an unlicensed family child care home was received by the Division of Child Development from county Department of Social Services. Upon investigation, it was determined that the provider had failed to properly supervise the five children who were receiving care in the illegal home. A juvenile member of the provider's family took a four-year-old child into a separate room and sexually assaulted the child. The provider was issued a criminal summons. At trial, she pled guilty to a Class 1 misdemeanor. She received a 30day suspended sentence and 18 months of supervised probation. The provider had previously been licensed, but had decided not to renew her license. However, she operated her unlicensed, illegal child care home without detection for approximately 10 years until the sexual abuse incident came to light.

12. Illegal Provider Went Shopping and Left Infant Unsupervised at Home

The county Department of Social Services substantiated child neglect in a case involving a six-month-old who was left alone in a house while the provider was shopping with the other children. The facility was not licensed. Two criminal summons were served on the provider. She pled guilty to a Class 1 misdemeanor and received 12 months of unsupervised probation.

13. Children Sexually Abused; No Charges After Provider Ceased Operation

County Department of Social Services reported a substantiation of child neglect in an illegal day care home. The substantiation was based on inadequate supervision of the children in care resulting in several children being seriously harmed when they were sexually abused by members of the provider's family. At the time of the investigation, the provider was caring for children without being licensed. However, when Division of Child Development visited the home, the provider was no longer operating a family child care home. Unannounced monitoring visits continued to assure that child care was not being provided. Neither an arrest warrant or criminal summons was issued because the provider had ceased operation. The police continued with the investigation of the sexual abuse incident, but the parents of the children were reluctant to prosecute because of the age of their children and length of time since the incidents occurred.

Examples of Illegal Child Care Providers

B. Abuse and Neglect Investigations by County Department of Social Services that Uncovered Illegal Child Care

- A six-month-old infant was left unsupervised in a home while the illegal provider drove away for approximately 15 minutes. The infant's parent arrived at the home to find her child alone in the house and called the police to rescue her child. There were five children in care at the time of the incident.

- A three-month-old infant sustained bruising to the insides of his legs when his legs were pulled through the crib railings by another child. The same infant received an unexplained bump to his head and bruised ear. It was also verified the infant laid in his vomit for an undetermined amount of time, which caused a rash on his face. There were eight children in care by the illegal provider.

- A six-week-old infant was taken from an illegal provider's home to a hospital emergency room. The infant was diagnosed with subdural hemotaosis and was having seizures. Emergency room physicians stated the infant's injuries were not consistent with an accident, and were consistent with Shaken Baby Syndrome. Criminal charges of abuse were filed.

- Four preschool age children were left alone with an illegal provider's husband who was a convicted sex offender, a recovering alcoholic, and drug abuser.

- A nine-year-old stated that he was "smacked" seven or eight times in the face and his hair pulled by an illegal provider. It was reported that on other occasions children were picked up by their arms and spanked with the provider's hand. The illegal provider admitted to slapping the nine-year-old on several occasions. The investigation verified six children in care, ranging in ages from one year to 10 years old.

- A four-year-old was left alone in a park when an illegal provider and five other children left in her car. The victim child was found by an adult who called the police. The provider later returned to the park leaving the other children home alone but couldn't find the child and called the police. The police were caring for the child at the police station while trying to contact a relative.

- An illegal provider's husband sexually abused a nine-year-old child in care. The husband stated to police that the child initiated the sexual contact and that he was intoxicated most days the children were there. The investigation documented many children in care on different days, some of which were grandchildren, but with unrelated children also present. The husband was charged with first degree statutory sex offense and taking indecent liberties with a minor. The provider stated that she napped with the younger children, and her husband had sole responsibility of the school age children. It was also determined by the social worker that an unsafe environment existed for the children. Both adults were in declining health due to high blood pressure, diabetes, severe arthritis, and seizures.

Examples of Illegal Child Care Providers

- A three-year-old child was sexually abused by a household member of an illegal provider. The provider stated that she was not aware of the incidents, however, the perpetrator admitted to the sexual abuse and said that the provider was in the home at the time of the abuse. Criminal charges were dismissed. The perpetrator is awaiting placement in a treatment center.

- A 20-month old received severe bruising to her shoulders and neck while in an illegal home. The provider was in the kitchen preparing lunch and the toddler was left alone with three preschool age children. The investigation revealed that the provider said she heard two "thuds" and the child cry. Returning to the living room she found the toddler upside down on hard toys, stuck between boxes and the wall. The child's mouth was bleeding. Later in the afternoon she left the four children in the care of her fifteen-year-old daughter. The parents picked up the child while the provider was out, with the fifteen-year-old left in charge. They noticed the bruising and took the child to an emergency room. The medical evaluation determined that the injuries were not consistent with the account given by the illegal provider. The police were unable to gather sufficient evidence to file criminal charges and the case was closed.

- An illegal provider was found to be using inappropriate methods of discipline. It was verified by Department of Social Services that the provider placed duct tape on the mouth of a three-year-old, kept preschool age children in high chairs in the corner for at least three hours, and used a paint paddle or a fly swatter to spank children.

- A three-year-old child was sexually abused in the home of an illegal provider. The fourteen-year-old child of the provider was accused of the abuse. The juvenile was often left with the preschool age children while the provider completed household tasks. They often played in the bedroom with the juvenile. The sheriff could not charge the juvenile but the illegal provider was charged with neglect. The parents of the juvenile would not agree to counseling as requested by the sheriff's department.

- Many other counties have reported sexual abuse of children in care of an illegal provider. Cases from Columbus, Craven, Cumberland, Duplin, Durham, Franklin, Granville, Halifax, Johnston, Mecklenburg, Pitt, Rowan, Vance, Wake, and Wilson Counties are listed above.

SENATE BILL 877:
Child Care Facilities/Penalties.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Purcell
Date:	May 20, 2003	**Summary by:**	Susan L. Sitze*
Version:	S877-CSSA-18[v.1]		Committee Counsel

SUMMARY: ***Senate Bill877 would enhance penalties for violations of the Child Care Facilities Act. The Act would be amended to clarify that all child care facilities must obtain and display a license. The act would be effective on December 1, 2003, and would apply to offenses committed on or after that date.***

BILL ANALYSIS:

Section 1 of the bill provides that:

- Violations by child care facilities, except for the noted exclusions, remain as Class 1 misdemeanors. Violations by family child care homes would also become Class 1 misdemeanors (currently Class 3).
- Persons who operate without a license, in willful violation of the Act's requirement to have a license, would be subject to conviction as a Class I felon.
- Persons who provide child care to three or more children, for more than four hours a day on two consecutive days, and who willfully violate the Act's provisions, would be subject to conviction as a Class I felon.
- A person who violates the Act and, as a result, causes serious injury to a child attending the child care facility, would be subject to conviction as a Class H felon.
- A person who violates the Act, and has a prior misdemeanor conviction for violating the Act, would be subject to conviction as a Class H felon.

Section 2: Clarifies that it is unlawful to operate a child care facility without a license. The current statute refers to the statute which provides for the application process.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

*Hal Pell contributed substantially to this summary.

S877-SMSA-001

WHAT IS AND IS NOT CHILD CARE IN NORTH CAROLINA AS DEFINED IN G.S. 110

Definition of Child Care:

A program or arrangement where:

- three or more children less than 13 years old, and
- who do not reside where the care is provided, and
- receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day
- from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

These Arrangements are not Child Care:

a. Arrangements operated in the home of any child receiving care if all the children in care are related to each other and no more than two additional children are in care;
Example: A grandmother caring for her grandchildren

b. Recreational programs operated for less than four consecutive months in a year;
Example: Summer day camps

c. Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics, or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups, or boys and girls clubs;

d. Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches;
Example: Drop-in care provided at a health club

e. Public schools;

f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by the Southern Association of Colleges and Schools and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school site;
Example: Private schools

g. Bible schools conducted during vacation periods;

h. Care provided by facilities licensed under Article 2 of Chapter 122C of the General Statutes;
Example: Residential child care facilities

i. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and

j. Any child care program or arrangement consisting of two or more separate components, each of which operates for four hours or less per day with different children attending each component.
Example: Mother's Morning Out programs

Definition of Child Care Facility:

Includes child care centers, family child care homes, and any other child care arrangement not excluded in the list above, that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.

b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

2003 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
S.B. 877 A BILL TO BE ENTITLED AN ACT TO ENHANCE PENALTIES FOR VIOLATIONS OF THE CHILD CARE FACILITIES 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 the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 22, 2003

Minutes

The House Judiciary I Committee met on Thursday, May 22, 2003 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 Capps, Harrell, Insko, Ross, Sexton, and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney said that the committee would consider Senate Bill 912, AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY, (Attachment III). Ms. Susan Sitze, Committee Counsel was recognized to explain the bill. She said that the bill adds two new definitions to the definitions at the beginning of the sex offense article of Chapter 14 regarding "sexual contact" and "touching." The bill would create a new criminal offense of sexual battery that provides for a Class A1 misdemeanor for any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person either by force and against the will of the other person, or with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person has one of those conditions. She said that the Senate version developed the text to conform to the way the other sex offense statutes are written. The bill provides penalties higher than simple assault for sexual battery, including felony charges for repeat offenders and will address recidivism in sex offenders. A copy of the bill analysis prepared by Ms. Sitze is attached, (Attachment IV). Copies of the House companion bill, House Bill 1044 (Attachment V), were distributed and differences in the two were explained.

Senator Clodfelter said that the language was conformed to existing case law that prosecutors and court officials are already familiar under the first and second degree sexual offense categories, and it was thought that the use of that language in this new third degree offense would provide for easier interpretation. He noted that North Carolina is one of only three states in the United States that does not criminalize sexual battery as a separate crime.

Ms. Veronica Butcher, North Carolina Coalition Against Sexual Assault (NCCASA), commented briefly in support of the bill.

Ms. Anne Winner, representing NCCASA, responded to questions.

Discussion followed regarding the degree of offenses. Ms. Sitze stated that part of the benefit of the statute is that it is a sexually related charge as opposed to just plain

assault which is what an offender would now be charged with. She said that this allows for a better tracking of sexually related offenses.

Senator Clodfelter commented on the category of offenses, and agreed that this would aid police departments in developing a way to track offenses. He said that having a new category would provide a way to segregate it out and be better able to track the offenders and follow up to see if patterns of abuse are developing. He said that his police department feels that this will be a good law enforcement tool.

Representative Ross moved that the bill be given a favorable report.

The motion for a favorable report was before the committee. Upon a vote of the members, Senate Bill 912 was given a favorable report, (Attachment VI).

The meeting was adjourned at 10:45.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
THURSDAY MAY 22, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 912 – SEXUAL BATTERY
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelly E. Bonaddio	Cary
Jennifer Perkins	Raleigh
Vernon Butcher	NCCASA
J Stevens	nursing
Julie Allen	NC Statewatch
Chris Bird	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 912*
Judiciary I Committee Substitute Adopted 4/17/03

Short Title: Sexual Battery. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.1 reads as rewritten:

"**§ 14-27.1. Definitions.**

As used in this Article, unless the context requires otherwise:

...

(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, or (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks.

(6) 'Touching' as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim."

SECTION 2. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.5A. Sexual battery.**

(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

SENATE BILL 912: Sexual Battery.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Sen. Clodfelter
Date:	May 22, 2003	**Summary by:**	Susan L. Sitze*
Version:	2nd Edition		Committee Counsel

SUMMARY: ***This bill creates the new criminal offense of sexual battery. The act becomes effective on December 1, 2003, and would apply to offenses committed on or after that date.***

CURRENT LAW: A person convicted of a simple assault and battery is guilty of a Class 2 misdemeanor. If the victim is a female, and the perpetrator is a male at least 18 years of age, the person is guilty of a Class A1 misdemeanor. If serious injury is inflicted, it is a Class A1 misdemeanor.

BILL ANALYSIS:

Section 1: The act would create new definitions in the Article that covers sex offenses (Art. 7A, Chapter 14). Both "Sexual contact" and "Touching" would be defined.

Section 2: Chapter 14, Article 7A, would be amended to add a new criminal offense. A person who contacts another person's sexual organ, anus, breast, groin, or buttocks, or if the person's sexual organ, anus, breast, groin, or buttocks contact another person, he would be guilty of the offense--if the contact was made for the purpose of sexual gratification, sexual arousal, or sexual abuse. The contact must be by force and against the will of the other person (without consent), or with a person who is mentally incapacitated, disabled, or physically helpless. A person convicted of sexual battery is subject to sentencing as a Class A1 misdemeanant.

Section 3: The act would become effective on December 1, 2003, and would apply to offenses committed on or after that date.

BACKGROUND: Other offenses:

§ 14-27.5. Second-degree sexual offense.

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

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

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

[Requires the perpetrator to commit a "sexual act"--fellatio, cunnilingus, analingus, or anal intercourse; or penetration, however slight, by any object into the genital or anal opening of another person's body]

(over)

§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) through (3) Repealed by Session Laws 1995, c. 507, s. 19.5(b);
(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;
(8) Repealed by Session Laws 1995, c. 507, s. 19.5(b);
(9) Commits an assault and battery against a sports official when the sports official is discharging . . . ..

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon;
(2) Assaults a female, he being a male person at least 18 years of age;
(3) Assaults a child under the age of 12 years;
(4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties;
(5) Repealed by Session Laws 1999-105, s. 1; or
(6) Assaults a school employee or school volunteer when . . . .

§ 14-32.1. Assaults on handicapped persons; punishments.

(a) For purposes of this section, a "handicapped person" is a person who has:

(1) A physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness; or
(2) Infirmity

which would substantially impair that person's ability to defend himself.

(b) through (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 31.

(e) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a handicapped person is guilty of a Class F felony. A person commits an aggravated assault or assault and battery upon a handicapped person if, in the course of the assault or assault and battery, that person:

(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a handicapped person; or
(2) Inflicts serious injury or serious damage to a handicapped person; or
(3) Intends to kill a handicapped person.

(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a Class 1 misdemeanor.

*H.Alan Pell contributed substantially to this summary.
S912-SMSA-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1044*

Short Title:	Sexual Battery.	(Public)
Sponsors:	Representatives Hackney; and Insko.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-27.15. Sexual battery.**

(a) Definitions. – The following definitions apply in this section:

(1) 'Intimate parts' means the genital area, groin, anus, inner thighs, buttocks, or breasts.

(2) 'Sexual contact' means any contact by a defendant with the intimate parts of a person not married to the defendant for the purpose of sexual gratification of the defendant or for the purpose of degrading or humiliating the person or any contact by a defendant of the intimate parts of the defendant with a person not married to the defendant for the purpose of sexual gratification of the defendant or for the purpose of degrading or humiliating the person.

(b) Offense. – A defendant commits the offense of sexual battery if the defendant intentionally subjects another person to sexual contact.

(c) Penalty. – A defendant convicted of a first offense under this section is guilty of a Class A1 misdemeanor. A defendant convicted of a second or subsequent offense under this section is guilty of a Class I felony."

SECTION 2. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

2003 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
S.B. 912 A BILL TO BE ENTITLED AN ACT TO CREATE THE OFFENSE OF SEXUAL BATTERY.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 27, 2003

Minutes

The House Judiciary I Committee met on Tuesday, May 27, 2003 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, Capps, Harrell, Insko, Miller, Ross and Wood. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Chairman Hackney announced that the committee would revisit Senate Bill 708, AN ACT TO ALLOW CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF FIRE DEPARTMENTS. The bill had been given a favorable report by the committee on May 20 (Attachment III). He said that following the meeting some concerns arose and were communicated about the bill, which resulted in the bill not being report out of the committee. He said that Senator Shubert was notified, and it was decided to bring the bill back before the committee. A new proposed committee substitute (Attachment IV) was distributed.

Representative Capps moved that the vote by which Senate Bill 708 received a favorable report be reconsidered. The motion carried.

Representative Capps 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 in the new committee substitute. She reminded the members that the bill would authorize local Homeland Security agencies to request criminal background checks on any applicants. She said that she had tried to contact the Department of Crime Control and Public Safety prior to the May 20 meeting to confirm that the use of the term "local Homeland Security agency" and what that meant and had been unable to speak to anyone. She had then received some information from another source that she thought was accurate, but after the meeting she found out that there is not necessarily in each county a set agency that is known as a "local Homeland Security agency" and that in some counties it could be one agency and in others it might be several agencies working together. In order to make the bill available to all fire departments, a change has been made to say that the background check can be done through a designated local Homeland Security director, because there are a few counties who have hired an individual person and designated that person as such. However, when there is no designated local Homeland Security director, the background check can be done by a local law enforcement agency. This way, every fire department should have someone to which they can go to do these background checks if they would like to do them.

Representative Capps moved for a favorable report for the House committee substitute. The motion carried, (Attachment V).

Chairman Hackney announced that the Hospital Association was continuing to work on Senate Bill 1011, AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES, and the bill had been removed from the agenda at their request.

The next bill under consideration was Senate Bill 629, AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS, (Attachment VI). A proposed House Committee Substitute was distributed, (Attachment VII) and Representative Ross moved its adoption for the purpose of discussion. The motion carried.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the committee substitute. She stated that a subordination agreement is an agreement between two or more parties where the party with an interest in property such as a lien or mortgage, agrees to allow another interest in property with a lower priority to have priority for collection purposes. She said that the intent of the bill is to clarify some case law that has been handed down recently. She identified the new language found in Sections 2 and 3 of the bill. That language is intended to clarify language that was handed down in 1935 that basically said that if there were two instruments that were recorded simultaneously, they had the same priority. She said that the bill says that the earliest document number would take precedence. A copy of her bill analysis is attached, (Attachment VIII).

Mr. Paul Stock, North Carolina Bankers Association commented briefly in support of the bill.

Mr. Jim Creekman, First Citizens Bank, was also recognized to comment on the bill.

In response to a question regarding the position taken by the Registers of Deeds, Mr. Stock stated that it was his understanding that they were in support of the bill.

Representative Wood moved that the committee substitute be given a favorable report. The motion carried, (Attachment IX).

The meeting was adjourned at 10:55.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

TUESDAY MAY 27, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 629 – CLARIFY SUBORDINATION AGREEMENT
SENATOR CLODFELTER

SENATE BILL 1011 – HEALTH CARE PROVIDER LIENS
SENATOR BERGER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J E Creekman	First Citizens Bank PO Box 27131 Raleigh NC 27611
Paul Stall	NC Bankers Assn.
John Withrow	NC State AFL-CIO
Amy Darden	NC Bar Assn.
Cindy Jo Horne	NCMS
Joanne Stevens	nursing

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 708
Judiciary II Committee Substitute Adopted 4/23/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S708-PCS35287-SA-19

Short Title: Fire Dept. Crim. Background Checks. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF FIRE DEPARTMENTS.

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:

"**§ 114-19.12. Criminal history record checks of applicants to fire departments.**

(a) Definitions. – As used in this section, the term:

(1) "Applicant" means an applicant for a paid or volunteer position with a fire department in a unit of local government.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as 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, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as 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) When requested by a local Homeland Security agency, the North Carolina Department of Justice may provide to the requesting agency an applicant's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State 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 local Homeland Security agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the local Homeland Security agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the local Homeland Security agency receives through the checking of the criminal history is privileged information and for the exclusive use of that agency.

(d) If the applicant's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the person from a current position with the local fire department. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security agency in determining whether the position shall be denied:

(1) The level and 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 duties of the person;

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and

(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire department may deny the applicant the position or dismiss an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from the position.

(f) The local fire department may extend a conditional offer of the position pending the results of a criminal history record check authorized by this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 708

Judiciary II Committee Substitute Adopted 4/23/03

PROPOSED HOUSE COMMITTEE SUBSTITUTE S708-PCS35297-SA-20

Short Title: Fire Dept. Crim. Background Checks. (Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF FIRE DEPARTMENTS.

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:

"**§ 114-19.12. Criminal history record checks of applicants to fire departments.**

(a) Definitions. – As used in this section, the term:

(1) "Applicant" means an applicant for a paid or volunteer position with a fire department in a unit of local government.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as 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, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as 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) When requested by a designated local Homeland Security director or, when there is no designated local Homeland Security director, by a local law enforcement agency, the North Carolina Department of Justice may provide to the requesting director or agency an applicant's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director or local law enforcement agency shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form signed by the applicant to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State 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 local Homeland Security director or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the local Homeland Security director or local law enforcement agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the local Homeland Security director or local law enforcement agency receives through the checking of the criminal history is privileged information and for the exclusive use of that director or agency.

(d) If the applicant's verified criminal history record check reveals one or more convictions covered under subdivision (a)(2) of this section, then the conviction shall constitute just cause for not selecting the applicant for the position or for dismissing the person from a current position with the local fire department. The conviction shall not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security director or local law enforcement agency in determining whether the position shall be denied:

(1) The level and 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 duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The local fire department may deny the applicant the position or dismiss an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from the position.

(f) The local fire department may extend a conditional offer of the position pending the results of a criminal history record check authorized by this section."

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

2003 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
S.B. 708 A BILL TO BE ENTITLED AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE MEMBERS OF VOLUNTEER FIRE DEPARTMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 629
Judiciary I Committee Substitute Adopted 4/21/03

Short Title: Clarify Subordination Agreement Requirements. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.6. Subordination agreements.**

(a) A written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. For purposes of this section, an "interest in real property" shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a commitment or agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.

(d) The section is not exclusive. No agreement that is otherwise valid shall be invalidated by failure to comply with the provisions of this section."

SECTION 2. This act becomes effective October 1, 2003, and applies to subordination agreements filed or recorded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 629

Judiciary I Committee Substitute Adopted 4/21/03.
PROPOSED HOUSE COMMITTEE SUBSTITUTE S629-CSST-45 [v.1]

5/23/2003 2:31:30 PM

Short Title: Clarify Subordination Agreement Requirements. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.6. Subordination agreements.**

(a) A written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. For purposes of this section, an "interest in real property" shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a commitment or agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.

(d) The section is not exclusive. No agreement that is otherwise valid shall be invalidated by failure to comply with the provisions of this section."

SECTION 2. G.S. 47-18(a) reads as rewritten:

"(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor,

bargainor or lessor but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the recorded instrument or on a separate recorded instrument duly executed by the party whose priority interest is adversely affected, instruments registered in the public record shall be presumed to have priority based on the order of recordation as determined by the time of recordation. If instruments are recorded simultaneously, then the order of recordation shall be presumed as follows, in order of priority:

(1) The earliest document number set forth on the recorded instrument.

(2) The sequential book and page number set forth on the document if no document number is set forth on the recorded instrument.

The presumptions created by this subsection are rebuttable."

SECTION 3. G.S. 47-20(a) reads as rewritten:

"(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the recorded instrument or on a separate recorded instrument duly executed by the party whose priority interest is adversely affected, instruments registered in the public record shall be presumed to have priority based on the order of recordation as determined by the time of recordation. If instruments are recorded simultaneously, then the order of recordation shall be presumed as follows, in order of priority:

(1) The earliest document number set forth on the recorded instrument.

(2) The sequential book and page number set forth on the document if no document number is set forth on the recorded instrument.

The presumptions created by this subsection are rebuttable."

SECTION 4. This act becomes effective October 1, 2003, and applies to all instruments filed or recorded on or after that date.

SENATE BILL 629:
Clarify Subordination Agreement Requirements.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	May 27, 2003	**Summary by:**	R. Erika Churchill
Version:	S629-CSST-45 v.1		Committee Co-Counsel

SUMMARY: The proposed committee substitute for Senate Bill 629 defines the requirements for valid subordination agreements to add clarity to the law.

CURRENT LAW:

Subordination Agreements. A subordination agreement is an agreement between two or more parties where the party with an interest in property (such as lien or mortgage) agrees to allow another interest in property with a lower priority (a mortgage on the same property recorded later in time) to have priority for collection purposes over the earlier acquired interest. Current law governing contracts has generally been applied to subordination agreements in NC. But recent court cases have added additional formalistic requirements to what is required for a valid subordination agreement.

BILL ANALYSIS:

Section 1. Section 1 of the bill adds a new section G.S. 39-6.6 to Article 1 of Chapter 39.

- Subsection (a) sets out that a subordination agreement shall be given effect in accordance with its terms and does not require that any of the financial terms of the interest in real property be included. This subsection also makes clear that subordination agreements also apply to statutory liens and judgments, not just written interests in land.
- Subsection (b) states that a trustee does not need to sign a subordination agreement unless the deed of trust specifically requires.
- Subsection (c) clarifies that a subordination agreement is an interest in real property to which the 10-year statute of limitation under G.S. 1-47 applies.
- Subsection (d) provides that this section is not exclusive and that no agreement that is otherwise valid is invalid because it fails to comply with the provisions of this section.

Sections 2 and 3. Sections 2 and 3 of the proposed committee substitute add identical language clarifying the priority of instruments recorded in the public record. The language would clarify that priority is presumptively determined according to the date and time order in which the instruments are filed. If instruments are recorded simultaneously, then the order of recordation shall be presumed to be the earliest document number set forth on the recorded instrument, or if no document number is set forth on the recorded instrument then the sequential book and page number set forth on the document.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply to instruments filed on or after that date.

*Walker Reagan contributed to this summary.

ATTACHMENT IX

2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 629 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

May 29, 2003

Minutes

The House Judiciary I Committee met on Thursday, May 29, 2003 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 Capps, Harrell, Insko, Miller and Ross. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Ms. Erika Churchill, Committee Counsel, was recognized for an explanation of senate Bill 925, AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD AND TO CLARIFY THE PROHIBITION ON STATE CONTRACTS WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK, (Attachment III). She said that the bill, introduced by Senator Rand at the request of the Secretary of State's Office, would strengthen laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from such fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators. She added that the bill would also prohibit the State from contracting with vendors that incorporate or reincorporate in a tax haven country after December 31, 2001, and the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country. A copy of the bill analysis prepared by Ms. Churchill is attached, (Attachment IV).

Mr. Scott Templeton, Deputy Secretary, Office of the Secretary of State, was recognized and commented briefly on the bill. He said that the bill, with one exception, is the product of the General Statutes Commission's review of this legislation between last year and this year. He said that a similar bill went through during the last session, and at the end of the session certain provisions were pulled out for study by the General Statutes Commission. He said that the bill before the committee was the result of that study except for the civil liability language that was added by the current sponsor.

Mr. David Massey, Director, North Carolina Securities Division, Office of the Secretary of State, was recognized for further explanation of the bill. He said that the thrust of the bill is to primarily to address fraudulent activity in the context of securities and investments in North Carolina. He said that the central piece is the raising of the criminal penalty in the Securities Act to be consistent with the existing penalties applicable to theft by false pretense and by embezzlement. He said that there are provisions in the bill that address various types of abusive practices that are visited on the

investment public. Mr. Massey reviewed the bill section-by-section and responded to questions.

Discussion followed regarding the withdrawal of an application after investigation of the applicant's qualifications.

Representative Miller expressed concern regarding the language of Section 9 and said suggested additional research on that section.

Discussion followed regarding tax haven countries.

Theresa Kostrzewa, representing the Government of Cypress, commented briefly saying that Cypress has been eliminated from the bill because it is not a tax haven country.

Senator Rand stated that the Principality of Liechtenstein should be removed from the list of tax haven countries.

The staff was directed to prepare a new committee substitute to be discussed at the next meeting.

The meeting was adjourned at 10:55 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY MAY 29, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 925 – STRENGTHEN SECURITY FRAUD ENFORCEMENT LAWS
SENATOR RAND

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — May 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	Household Fin. Group
Dirk Carlton	Carlton Meander
Thomas Walker	NCDOT
P. Ray Hull	Revisor Statutes Commission
Susie Templeton	Dept State
Robert T. Wilson	S.O.S.
Allan Russ	Secretary of State
David Massey	SEC of STATE
Bill Scoggin	KCLH
Amy Dobson	NC Statewatch
TOM BEASON	NC ENV DEF
Tyler Hughes	NC Env. Def.

Britt Gunnells NCSDA

John Ostale Gov's Office

John Motley ? Gov office

James Andrews NC State AFL-CIO

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 2

SENATE BILL 925
Judiciary II Committee Substitute Adopted 4/23/03

Short Title: Strengthen Security Fraud Enforcement Laws. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD AND TO CLARIFY THE PROHIBITION ON STATE CONTRACTS WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-12 reads as rewritten:

"**§ 78A-12. Manipulation of market.**

(a) In addition to the prohibitions of G.S. 78A-8, it is unlawful for any person ~~to:~~to do any of the following:

(1) Willfully quote a fictitious price with respect to a ~~security;~~security.

(2) Effect a transaction in a security which involves no change in the beneficial ownership of the security, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(3) Enter an order for the purchase of a security with the knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the sale of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(4) Enter an order for the sale of a security with knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the purchase of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of

active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security; or~~security.

(5) Employ any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a ~~security.~~security, including the issuance, with the intent to deceive or defraud, of analyses, reports, or financial statements that are false or misleading in any material respect.

(b) A transaction effected in compliance with the applicable provisions of the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission thereunder is not manipulation of the market under subsection (a) of this section."

SECTION 2. G.S. 78A-25(a)(1)b. reads as rewritten:

"b. The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting ~~practices,~~principles, (i) which are applicable to all securities without a fixed maturity or a fixed ~~interest or dividend or distribution~~ provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;".

SECTION 3. G.S. 78A-37(a) reads as rewritten:

"(a) A dealer or salesman may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to G.S. 78A-63(f). The application shall contain whatever information the Administrator by rule requires concerning such matters as (i) the applicant's form and place of organization; (ii) the applicant's proposed method of doing business; (iii) the qualifications and business history of the applicant; in the case of a dealer, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer, and a representation that the applicant dealer is duly registered as a dealer under the Securities Exchange Act of 1934; (iv) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (v) the applicant's

financial condition and history. If no denial order is in effect and no proceeding is pending under G.S. 78A-39, registration becomes effective at noon of the thirtieth day after an application is filed. The Administrator may by rule or order specify an earlier effective ~~date,~~date and ~~he~~ may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a dealer automatically constitutes registration of any salesman who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78A-39 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 4. G.S. 78A-49(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the Administrator shall be audited and shall be prepared in accordance with generally accepted accounting ~~practices.~~principles, except where the Administrator may by rule or order provide otherwise. In determining whether to permit the filing of financial statements that have not been audited, the Administrator shall consider all of the following factors:

(1) Whether lesser standards for financial statements will impair investor protection.

(2) The cost of preparation of audited financial statements relative to the proposed offering amount.

(3) Whether recently audited financial statements of the issuer are available in addition to current interim statements.

(4) Whether the issuer has commenced significant business operations.

(5) Any other factors that are relevant to the protection of the investing public."

SECTION 5. G.S. 78A-56(a) reads as rewritten:

"(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), ~~78A-12,~~ 78A-13, 78A-14, 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if ~~he~~ the purchaser no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition."

SECTION 6. G.S. 78A-56(b) reads as rewritten:

"(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate as provided by G.S. 24-1 from the date of disposition, over the consideration paid for the security."

SECTION 7. G.S. 78A-56 is amended by adding a new subsection to read:

"(b1) A person who willfully violates G.S. 78A-12 is liable to a person who purchases or sells a security, other than a security traded on a national securities exchange or quoted on a national automated quotation system administered by a self-regulatory organization, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction. Damages are the difference between the price at which the securities were purchased or sold and the value the securities would have had at the time of the person's purchase or sale in the absence of the act or transaction, plus interest at the legal rate as provided by G.S. 24-1 from the date of the purchase or sale, costs, and reasonable attorneys' fees determined by the court."

SECTION 8. G.S. 78A-56(c) reads as rewritten:

"(c)

(1) Every person who directly or indirectly controls a person liable under subsection ~~(a) or (b),~~ (a), (b), or (b1) of this section, every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, ~~every employee of such a person who materially aids in the act or transaction,~~ and every ~~dealer or salesman~~dealer, salesman, or other person excluding an employee subject to subdivision (2) of this subsection, who materially aids in the sale ~~are~~ is also liable jointly and severally with and to the same extent as ~~such~~ the person, unless ~~the person who is so liable sustains~~ able to sustain the burden of proof that ~~he~~ the person did not know, and in the

exercise of reasonable care ~~should~~ could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) Unless liable under subdivision (1) of this subsection, every employee of a person liable under subsection (a), (b), or (b1) of this section who materially aids in the act or transaction is also liable jointly and severally with and to the same extent as the person if the employee actually knew of the existence of the facts by reason of which the liability is alleged to exist.

(3) There is contribution ~~as in cases of contract~~ among the several persons ~~so liable~~ liable under subdivisions (1) and (2) of this subsection as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

SECTION 9. G.S. 78A-56(f) reads as rewritten:

"(f) No person may sue under this section for a violation of G.S. 78A-24 or G.S. 78A-36 more than two years after ~~the~~ sale ~~or contract of~~ sale.

No person may sue under this section for any other violation of this Chapter more than three years after the person discovers facts constituting the violation, but in any case no later than five years after the sale or contract of sale, except that if a person who may be liable under this section engages in any fraudulent or deceitful act that conceals the violation or induces the person to forego or postpone commencing an action based upon the violation, the suit may be commenced not later than three years after the person discovers or should have discovered that the act was fraudulent or deceitful."

SECTION 10. G.S. 78A-56(j) reads as rewritten:

"(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d). If the requirements of Chapter 1D of the General Statutes are met, punitive damages are available to the extent provided in that Chapter."

SECTION 11. G.S. 78A-57 reads as rewritten:

"**§ 78A-57. Criminal penalties.** (a) Any person who willfully violates any provision of this Chapter except G.S. 78A-8, 78A-9, 78A-11, 78A-12, 78A-13, or 78A-14 is guilty of a Class I felony.

(a1) Any person ~~or~~ who willfully violates any rule or order under this ~~Chapter, or who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon; but no~~ Chapter is guilty of a Class I felony. No person may be imprisoned for the violation of any rule ~~or order~~ if ~~he~~ the person proves that ~~he~~ the person had no knowledge of the ~~rule or order.~~ rule. It is an affirmative defense to a charge of violating an order under this Chapter that the person had no knowledge of the order.

(a2) Any person who willfully violates G.S. 78A-8, 78A-11, ~~78A-12,~~ 78A-13, or 78A-14 ~~shall, upon conviction be punished as a Class H felon.~~ is guilty of a felony. If the losses caused by a single act or a series of related acts in a common scheme or plan are one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C

felony. If the losses caused by a single act or a series of related acts in a common scheme or plan are less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a3) Any person who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect is guilty of a Class H felony. Any other willful violation of G.S. 78A-9 constitutes a Class 2 misdemeanor.

(a4) Any person who willfully violates G.S. 78A-12 is guilty of a Class H felony.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of ~~such~~ a reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of ~~such~~ the violation or violations on behalf of the State. Upon approval of the Administrator, ~~such~~ the employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of ~~such~~ the violations without receiving compensation from the ~~district attorney~~. ~~Such~~ a special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to ~~such~~ the special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

SECTION 12. Article 7 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-58. Obstruction of investigation.**

A person is guilty of a Class H felony if the person willfully does any of the following for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter:

(1) Makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement.

(2) Creates, causes to be made, or delivers any record, report, or document knowing that it is false or misleading in any material respect.

(3) Destroys or alters any record, report, or document.

(4) Conceals or secretes any record, report, or document."

SECTION 13. G.S. 78A-63(a) reads as rewritten:

"(a) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-13, 78A-14, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

SECTION 14. G.S. 78A-63(b) reads as rewritten:

"(b) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State."

SECTION 15. G.S. 78A-63 is amended by adding a new subsection to read:

"(b1) G.S. 78A-12 applies when any act instrumental to effecting prohibited conduct is done in this State."

SECTION 16. G.S. 78C-2(1) reads as rewritten:

"(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser ~~representative~~ or a person excluded from the definition of investment adviser representative pursuant to ~~G.S. 78C-2(3)c.;~~G.S. 78C-2(3)c.

b. A bank, savings institution, or trust ~~company;~~company.

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his ~~profession;~~profession.

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for ~~them;~~them.

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each ~~client;~~client.

f. A person solely by virtue of such person's services to or on behalf of any "business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an "investment company" by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on ~~June 1, 1988;~~June 1, 1988.

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a

plan or scheme to evade registration or the substantive requirements of this ~~Chapter;~~Chapter.

h. A licensed real estate agent or broker whose only compensation is a commission on real estate ~~sold;~~sold.

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a ~~business;~~business.

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated ~~entities;~~entities.

~~k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;~~

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his ~~employment;~~employment.

l 1. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

m. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate."

SECTION 17. G.S. 78C-16(a) reads as rewritten:

"(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

(1) The person is registered under this Chapter;

(2) The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; ~~or~~

(3) The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the ~~State.~~State; or

(4) The person is exempt from registration under the Investment Advisers Act of 1940 by operation of section 203(b)(3) of that act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to section 203(b)(3) provided that any reference in this subdivision to any statute, rule, or regulation shall be deemed to incorporate the statute, rule, or regulation (and any statute, rule, or regulation referenced therein) as in effect June 1, 1988."

SECTION 18. G.S. 78C-16(a1) reads as rewritten:

"(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is ~~registered under this~~ Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under ~~subdivision (2) or (3)~~ subdivision (2), (3), or (4) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1)."

SECTION 19. G.S. 78C-17(a) reads as rewritten:

"(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b) and paying any reasonable costs charged by the designee for processing the filings. The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective ~~date,~~date and ~~he~~ may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78C-19 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 20. G.S. 78C-30(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the ~~Administrator~~ shall ~~be~~ audited and shall be prepared in accordance with generally accepted accounting ~~practices.~~principles, except where the Administrator shall by rule or order provide otherwise."

SECTION 21. G.S. 78C-38(a) reads as rewritten:

"(a) Any person who:

(1) Engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, in violation of G.S. 78C-8(b), ~~G.S. 78C-16(a)~~G.S. 78C-16(a), (a1), or (b) (an action pursuant to a violation of G.S. 78C-16(b) may not be maintained except by those persons who directly received advice from the unregistered investment adviser representative), G.S. 78C-10(b), or of any rule or order under G.S. 78C-30(d) which requires the affirmative approval of sales literature before it is used, or

(2) Receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, in violation of G.S. 78C-8(a)(1) or (2),

is liable to any person who is given such advice in such violation, who may sue either at law or in equity to recover (i) the consideration paid for such advice together with interest thereon at the legal rate as provided in G.S. 24-1 from the date of payment of the consideration, plus (ii) the actual damages to such person proximately caused by such violation, plus (iii) costs of the action and reasonable attorneys' fees. An action

based on violation of G.S. 78C-8(b) may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist."

SECTION 22. G.S. 78C-38(b) reads as rewritten:

"(b)

(1) Every person who directly or indirectly controls a person liable under subsection (a) of this section, including every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, ~~every employee or associate of such a person who materially aids in the conduct giving rise to the liability,~~ and every ~~dealer or salesman~~dealer, salesman, or other person excluding an employee subject to subdivision (2) of this subsection, who materially aids in such conduct is liable jointly and severally with and to the same extent as ~~such~~ the person, unless able to sustain the burden of proof ~~that he~~ the person did not know, and in the exercise of reasonable care ~~should~~ could not have ~~known~~ known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) Unless liable under subdivision (1) of this subsection, every employee or associate of a person liable under subsection (a) of this section who materially aids in the conduct giving rise to the liability is liable jointly and severally with and to the same extent as the person if the employee or associate actually knew of the existence of the facts by reason of which the liability is alleged to exist.

(3) There is contribution ~~as in cases of contract~~ among the several persons ~~so~~ liable under subdivision (1) and (2) of this subsection ~~and~~ as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

SECTION 23. G.S. 78C-38(d) reads as rewritten:

"(d) No person may sue under this section more than three years after the rendering of investment advice in violation of ~~this Chapter, except that in the case of a violation of G.S. 78C-8(a)(1) or (2) a person may sue under this section within two years after such person discovers or should have discovered, the facts constituting the violation.~~ G.S. 78C-16.

No person may sue under this section for any other violation of this Chapter more than three years after the person discovers facts constituting the violation, but in any case no later than five years after the rendering of investment advice, except that if a person who may be liable under this section engages in any fraudulent or deceitful act that conceals the violation or induces the person to forego or postpone commencing an action based upon the violation, the suit may be commenced not later than three years after the person discovers or should have discovered that the act was fraudulent or deceitful."

SECTION 24. G.S. 78C-38(g) reads as rewritten:

"(g) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78C-17(e). If the requirements of Chapter 1D of the General Statutes are met, punitive damages are available to the extent provided in that Chapter."

SECTION 25. G.S. 78C-39 reads as rewritten:

"**§ 78C-39. Criminal penalties.**

(a) Any person who willfully violates any provision of this Chapter except G.S. 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 is guilty of a Class I felony. ~~or who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon.~~

(a1) Any person who willfully violates any rule or order under this Chapter is guilty of a Class I felony. No person may be imprisoned for the violation of any rule if the person proves that the person had no knowledge of the rule. It is an affirmative defense to a charge of violating an order under this Chapter that the person had no knowledge of the order.

(a2) Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b) ~~shall, upon conviction, be punished as a Class H felon.~~ is guilty of a felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a3) Any person who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect is guilty of a Class H felony. Any other willful violation of G.S. 78C-9 constitutes a Class 2 misdemeanor.

(a4) A person is guilty of a Class H felony if the person willfully does any of the following for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter:

(1) Makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement.

(2) Creates, causes to be made, or delivers any record, report, or document knowing that it is false or misleading in any material respect.

(3) Destroys or alters any record, report, or document.

(4) Conceals or secretes any record, report, or document.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of ~~such~~ a reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of ~~such~~ the violation or violations on behalf of the State. Upon approval of the Administrator, ~~such~~ the employee may be appointed a special prosecutor for the

district attorney to prosecute or assist in the prosecution of ~~such~~ the violations without receiving compensation from the district attorney. Such a special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to ~~such~~ the special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

SECTION 26. G.S. 78D-24(a) reads as rewritten:

"(a) Any person who willfully violates any provision of this Chapter ~~shall, upon conviction, be punished as a Class I felon.~~is guilty of a felony. If the losses caused by the violation or violations are one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the losses caused by the violation or violations are less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

SECTION 27. 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 and~~ Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators ~~Association~~ Association, Inc., for the purpose of promoting uniformity of state securities ~~regulation.~~regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter. 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 Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

SECTION 28. G.S. 143-59.1 reads as rewritten:

"**§ 143-59.1. Contracts with certain foreign vendors.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its

sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor if the vendor or an affiliate of the vendor ~~that is incorporated~~ incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the ~~corporation's stock.~~stock of the corporation incorporated in the tax haven country.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, ~~Cyprus,~~ Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles."

SECTION 29. Sections 11, 12, 25, and 26 of this act become effective December 1, 2003, and apply to acts committed on or after that date. Section 28 of this act becomes effective October 1, 2003, and applies to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 925:
Strengthen Security Fraud Enforcement Laws.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 29, 2003	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 925 would strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators.***

Additionally the bill would prohibit the State from contracting with vendors that incorporate or reincorporate in a tax haven country after December 31, 2001, and the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.

CURRENT LAW:

Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions. This is true whether or not the company is chartered in NC and whether or not the security is registered in North Carolina. Generally, with a few exceptions, criminal violations of the securities fraud laws are punished as Class H felonies regardless of the amount of money involved. G.S. 78A-57. Civil liabilities provide that the statute of limitations for securities fraud is two years and punitive damages are not allowed. G.S.78A-56.

BILL ANALYSIS:

Section 1. The bill clarifies that the issuance of false or misleading securities analyses, reports or financial statements constitutes a deceptive or fraudulent manipulation of the market.

Sections 2, 4, and 20. The bill corrects an incorrect reference to GAAP (generally accepted accounting principles) accounting standards and allows the Securities Administrator to require audited financial statements, except when waived by the Administrator by rule or order. Section 4 also sets forth factors that the Securities Administrator must consider in the determination as to whether to permit the filing of unaudited financial statements.

Sections 3 and 19. The bill amends the securities dealers and investment advisors registration laws to prevent the withdrawal of an application after investigation of a person's qualifications for registration has begun by the Securities Administrator. This change will permit the Administrator to make an administrative determination that the person is not qualified for registration or is subject to revocation of registration, which may prevent a disqualified person from later registering or registering in another state.

Sections 5 and 7. The bill specifies the civil liabilities for market manipulation in violation of G.S. 78A-12 and defines the measure of damages, including punitive damages.

Section 6. The bill clarifies that the legal rate of interest under G.S. 24-1 applies to interest paid as damages.

Sections 8 and 22. The bill conforms and expands the liability of a person who controls another person who violates the Securities Act and the Investment Advisor Act and sets the standard as "in the exercise of reasonable care could have known."

Section 9. The bill extends the civil statute of limitations under the securities law from two (2) years after the date of the sale of the securities to three (3) years after the discovery of a violation, but in no event more than five (5) years. The only exception to this is for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three (3) years from discovery.

Sections 10 and 24. The bill amends the civil damages remedies sections to authorize the recovery of punitive damages consistent with Chapter 1D of the General Statutes in addition to actual damages arising from securities **fraud.**

Sections 11, 25, and 26. The bill increases the punishment for criminal violations of the Securities Act, the Investment Act and the Commodities Act where total consideration lost totals $100,000 or more from a Class H felony to a Class C felony. This change makes the punishment for these types of white-collar crimes consistent with the punishment for other similar white-collar crimes including embezzlement and obtaining property by false pretenses.

Section 12, and the new G.S. 78C-39(a3) in Section 25, makes it a Class H felony to willfully interfere with an investigation by the Securities Administrator. Willful interference includes the destruction of records. This statute is similar to the statute that makes it a crime to willfully interfere with an audit by the State Auditor that is punished as a Class 2 misdemeanor. G.S. 147-64.7A.

Sections 13 and 14. The bill corrects the jurisdiction section of the Securities Act to subject unlawful manipulation of the markets under G.S. 78A-12 to sanctions under the Act.

Section 15. The bill specifies that market manipulation applies when any act instrumental to effecting prohibited conduct is done in North Carolina.

Sections 16-17. The bill recodifies an exception for registration as an investment advisor of a person registered under federal law.

Section 23. The bill amends the statute of limitations under the Investment Advisers Act to correspond to the changes made in Section 9 of the bill to the Securities Act. Here, the three-year statute of limitations from the date of the rendering of the investment advice in violation of the law would be replaced by a period of three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three years from discovery.

Section 27. The bill amends a limited provision of the Administrative Procedures Act to authorize the Secretary of State to adopt temporary rules governing the conduct of administrative hearings.

Section 28. The bill prohibits the Secretary of Administration from entering into a contract with a vendor or an affiliate of a vendor if the vendor or affiliate is incorporated or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country. The definition of "tax haven country" is identical to the definition of the same term that was in federal legislation before Congress in 2002 that would prohibit the federal government from using defense-spending funds as payment on any new contracts with "corporate expatriates." This section also deletes Cyprus from the list of tax haven countries.

EFFECTIVE DATE: The criminal provisions of the bill become effective December 1, 2003. The State contracting provision is effective October 1, 2003. The remainder of the bill is effective when it becomes law.

O. Walker Reagan and Robin Johnson contributed substantially to this summary.

House Judiciary I Committee

June 3, 2003

Minutes

The House Judiciary I Committee met on Tuesday, June 3, 2003 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 Clary, Daughtry, Harrell, Insko, Miller, Ross and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

A new House Committee Substitute for Senate Bill 925, AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD AND TO CLARIFY THE PROHIBITION ON STATE CONTRACTS WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK, (Attachment III). The bill introduced by Senator Rand, was previously discussed during the May 29 meeting of the committee.

Representative Sexton moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the changes made in the committee substitute. A copy of the bill analysis prepared by Ms. Churchill is attached, (Attachment IV).

Mr. David Massey, Office of the Secretary of State, was recognized to comment on the bill.

Considerable discussion followed regarding the denial of securities license.

Senator Rand commented on those expressed concerns saying that the state should not make it easier for those who might be less that straight-forward to obtain a license and should not allow them to have the state's stamp of approval.

Representative Ross stated that there is a different standard of proof between denying someone a license to do something and prosecuting a criminal case. She said that if the state can find something that is less than proof beyond a reasonable doubt, then some action should be taken against these people to prevent them from fleecing people in North Carolina and in other states. She said that this would be a very valuable service to the public.

Representative Miller said that if an application for a license is withdrawn, the applicant has not received state approval of the application, so the state is not approving

anything. He further asked that someone site a case where someone kept applying and finally received approval. He asked if the bill changes the fact that an applicant can withdraw an application within 30 days.

Mr. Massey said that the 30-day period applies to the Division and says that if the Division does not start the proceeding in denying the application, then the application becomes effective in 30 days.

Representative Miller expressed concern that the law would change to the point to where it does not match the national test that one must take in order to become a registered financial advisor in North Carolina.

Chairman Hackney asked if Representative Miller had an amendment he wished to offer. Representative Miller did not have an amendment.

Senator Rand is every one who is licensed under the federal act must also be licensed under the state act.

Mr. Massey replied that if one is licensed under the federal act states cannot grant a license.

Senator Rand emphasized that the bill addressed only those applying for state registration who would be bound by state regulations and not the federal regulation.

Representative Miller stated that he understood this, but that the test covers both state and federal applicants.

Chairman Hackney said that if the test covers state law and if state law changes, the test would surely change the test.

Representative Ross moved a favorable report for the House Committee Substitute for Senate Bill 925. The motion carried, (Attachment V). Representative Miller voted against the motion.

The meeting was adjourned at 10:35 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JUNE 3, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 925 – STRENGTHEN SECURITY FRAUD ENFORCEMENT LAWS
SENATOR RAND

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dina DiMaio	NCBA
David L Massey	SEC. OF STATE
Scott Templeton	Dept State
Allan Russ	Secretary of State
Thomas Walker	NCDOJ
Leslie DeJaegere	NCCBI
Fran Cochman	NC statewatch
Teresa K	AP

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 925
Judiciary II Committee Substitute Adopted 4/23/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S925-CSST-47 [v.5]

6/3/2003 9:08:15 AM

Short Title: Strengthen Security Fraud Enforcement Laws. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD AND TO CLARIFY THE PROHIBITION ON STATE CONTRACTS WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-12 reads as rewritten:

"**§ 78A-12. Manipulation of market.**

(a) In addition to the prohibitions of G.S. 78A-8, it is unlawful for any person ~~to:~~to do any of the following:

(1) Willfully quote a fictitious price with respect to a ~~security;~~security.

(2) Effect a transaction in a security which involves no change in the beneficial ownership of the security, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(3) Enter an order for the purchase of a security with the knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the sale of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(4) Enter an order for the sale of a security with knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the purchase of the security has

been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security; or~~security.

(5) Employ any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a ~~security.~~security, including the issuance, with the intent to deceive or defraud, of analyses, reports, or financial statements that are false or misleading in any material respect.

(b) A transaction effected in compliance with the applicable provisions of the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission thereunder is not manipulation of the market under subsection (a) of this section."

SECTION 2. G.S. 78A-25(a)(1)b. reads as rewritten:

"b. The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting ~~practices,~~principles, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend or distribution provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;".

SECTION 3. G.S. 78A-37(a) reads as rewritten:

"(a) A dealer or salesman may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to G.S. 78A-63(f). The application shall contain whatever information the Administrator by rule requires concerning such matters as (i) the applicant's form and place of organization; (ii) the applicant's proposed method of doing business; (iii) the qualifications and business history of the applicant; in the case of a dealer, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer, and a representation that the applicant dealer is duly registered as a dealer under the Securities Exchange Act of 1934; (iv) any injunction or

administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (v) the applicant's financial condition and history. If no denial order is in effect and no proceeding is pending under G.S. 78A-39, registration becomes effective at noon of the thirtieth day after an application is filed. The Administrator may by rule or order specify an earlier effective ~~date,~~date and ~~he~~ may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a dealer automatically constitutes registration of any salesman who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78A-39 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 4. G.S. 78A-49(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the Administrator shall be audited and shall be prepared in accordance with generally accepted accounting ~~practices.~~principles, except where the Administrator may by rule or order provide otherwise. In determining whether to permit the filing of financial statements that have not been audited, the Administrator shall consider all of the following factors:

(1) Whether lesser standards for financial statements will impair investor protection.

(2) The cost of preparation of audited financial statements relative to the proposed offering amount.

(3) Whether recently audited financial statements of the issuer are available in addition to current interim statements.

(4) Whether the issuer has commenced significant business operations.

(5) Any other factors that are relevant to the protection of the investing public."

SECTION 5. G.S. 78A-56(a) reads as rewritten:

"(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), ~~78A-12,~~78A-13, 78A-14, 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof

that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if ~~he~~ the purchaser no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition."

SECTION 6. G.S. 78A-56(b) reads as rewritten:

"(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate as provided by G.S. 24-1 from the date of disposition, over the consideration paid for the security."

SECTION 7. G.S. 78A-56 is amended by adding a new subsection to read:

"(b1) A person who willfully violates G.S. 78A-12 is liable to a person who purchases or sells a security, other than a security traded on a national securities exchange or quoted on a national automated quotation system administered by a self-regulatory organization, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction. Damages are the difference between the price at which the securities were purchased or sold and the value the securities would have had at the time of the person's purchase or sale in the absence of the act or transaction, plus interest at the legal rate as provided by G.S. 24-1 from the date of the purchase or sale, costs, and reasonable attorneys' fees determined by the court."

SECTION 8. G.S. 78A-56(c) reads as rewritten:

"(c)

(1) Every person who directly or indirectly controls a person liable under subsection ~~(a) or (b),~~ (a), (b), or (b1) of this section, every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, ~~every employee of such a person who materially aids in the act or transaction,~~ and every ~~dealer or salesman~~dealer or salesman who materially aids in the sale ~~are~~ is also liable jointly and severally with and to the same extent as ~~such~~ the person, unless ~~the person who is so liable sustains~~ able to sustain the

burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable care ~~should~~ could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) Unless liable under subdivision (1) of this subsection, every employee of a person liable under subsection (a), (b), or (b1) of this section who materially aids in the transaction giving rise to the liability and every other person who materially aids in the transaction giving rise to the liability is also liable jointly and severally with and to the same extent as the person if the employee or other person actually knew of the existence of the facts by reason of which the liability is alleged to exist.

(3) There is contribution ~~as in cases of contract~~ among the several persons ~~so liable.~~liable under subdivisions (1) and (2) of this subsection as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

SECTION 9. G.S. 78A-56(f) reads as rewritten:

"(f) No person may sue under this section for a violation of G.S. 78A-24 or G.S. 78A-36 more than two years after the sale or contract of sale.

No person may sue under this section for any other violation of this Chapter more than three years after the person discovers facts constituting the violation, but in any case no later than five years after the sale or contract of sale, except that if a person who may be liable under this section engages in any fraudulent or deceitful act that conceals the violation or induces the person to forego or postpone commencing an action based upon the violation, the suit may be commenced not later than three years after the person discovers or should have discovered that the act was fraudulent or deceitful."

SECTION 10. G.S. 78A-56(j) reads as rewritten:

"(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d). If the requirements of Chapter 1D of the General Statutes are met, punitive damages are available to the extent provided in that Chapter."

SECTION 11. G.S. 78A-57 reads as rewritten:

"**§ 78A-57. Criminal penalties.**

(a) Any person who willfully violates any provision of this Chapter except G.S. 78A-8, 78A-9, 78A-11, 78A-12, 78A-13, or 78A-14 is guilty of a Class I felony.

(a1) Any person ~~or~~ who willfully violates any rule or order under this ~~Chapter, or who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon; but no~~ Chapter is guilty of a Class I felony. No person may be imprisoned for the violation of any rule ~~or order~~ if ~~he~~ the person proves that ~~he~~ the person had no knowledge of the ~~rule or order.~~rule. It is an affirmative defense to a charge of violating an order under this Chapter that the person had no knowledge of the order.

(a2) Any person who willfully violates G.S. 78A-8, 78A-11, ~~78A-12,~~ 78A-13, or 78A-14 ~~shall, upon conviction be punished as a Class H felon.~~is guilty of a felony. If the

losses caused by a single act or a series of related acts in a common scheme or plan are one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the losses caused by a single act or a series of related acts in a common scheme or plan are less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a3) Any person who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect is guilty of a Class H felony. Any other willful violation of G.S. 78A-9 constitutes a Class 2 misdemeanor.

(a4) Any person who willfully violates G.S. 78A-12 is guilty of a Class H felony.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of ~~such~~ a reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of ~~such~~ the violation or violations on behalf of the State. Upon approval of the Administrator, ~~such~~ the employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of ~~such~~ the violations without receiving compensation from the district attorney. Such a special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to ~~such~~ the special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

SECTION 12. Article 7 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-58. Obstruction of investigation.**

A person is guilty of a Class H felony if the person willfully does any of the following for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter:

(1) Makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement.

(2) Creates, causes to be made, or delivers any record, report, or document knowing that it is false or misleading in any material respect.

(3) Destroys or alters any record, report, or document.

(4) Conceals or secretes any record, report, or document."

SECTION 13. G.S. 78A-63(a) reads as rewritten:

"(a) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-13, 78A-14, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

SECTION 14. G.S. 78A-63(b) reads as rewritten:

"(b) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State."

SECTION 15. G.S. 78A-63 is amended by adding a new subsection to read:

"(b1) G.S. 78A-12 applies when any act instrumental to effecting prohibited conduct is done in this State."

SECTION 16. G.S. 78C-2(1) reads as rewritten:

"(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to ~~G.S. 78C-2(3)c.;~~G.S. 78C-2(3)c.

b. A bank, savings institution, or trust ~~company;~~company.

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his ~~profession;~~profession.

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for ~~them;~~them.

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each ~~client;~~client.

f. A person solely by virtue of such person's services to or on behalf of any "business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an "investment company" by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on ~~June 1, 1988;~~June 1, 1988.

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a

plan or scheme to evade registration or the substantive requirements of this ~~Chapter;~~Chapter.

h. A licensed real estate agent or broker whose only compensation is a commission on real estate ~~sold;~~sold.

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a ~~business;~~business.

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated ~~entities;~~entities.

~~k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;~~

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his ~~employment;~~employment.

l 1. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

m. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate."

SECTION 17. G.S. 78C-16(a) reads as rewritten:

"(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

(1) The person is registered under this Chapter;

(2) The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; ~~or~~

(3) The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the ~~State.~~State; or

(4) The person is exempt from registration under the Investment Advisers Act of 1940 by operation of section 203(b)(3) of that act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to section 203(b)(3) provided that any reference in this subdivision to any statute, rule, or regulation shall be deemed to incorporate the statute, rule, or regulation (and any statute, rule, or regulation referenced therein) as in effect June 1, 1988."

SECTION 18. G.S. 78C-16(a1) reads as rewritten:

"(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is registered under this Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under ~~subdivision (2) or (3)~~ subdivision (2), (3), or (4) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1)."

SECTION 19. G.S. 78C-17(a) reads as rewritten:

"(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b) and paying any reasonable costs charged by the designee for processing the filings. The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective ~~date,~~date and ~~he~~ may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78C-19 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 20. G.S. 78C-30(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the Administrator shall be audited and shall be prepared in accordance with generally accepted accounting ~~practices~~ principles, except where the Administrator shall by rule or order provide otherwise."

SECTION 21. G.S. 78C-38(a) reads as rewritten:

"(a) Any person who:

(1) Engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, in violation of G.S. 78C-8(b), ~~G.S. 78C-16(a)~~G.S. 78C-16(a), (a1), or (b) (an action pursuant to a violation of G.S. 78C-16(b) may not be maintained except by those persons who directly received advice from the unregistered investment adviser representative), G.S. 78C-10(b), or of any rule or order under G.S. 78C-30(d) which requires the affirmative approval of sales literature before it is used, or

(2) Receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, in violation of G.S. 78C-8(a)(1) or (2),

is liable to any person who is given such advice in such violation, who may sue either at law or in equity to recover (i) the consideration paid for such advice together with interest thereon at the legal rate as provided in G.S. 24-1 from the date of payment of the consideration, plus (ii) the actual damages to such person proximately caused by such violation, plus (iii) costs of the action and reasonable attorneys' fees. An action

based on violation of G.S. 78C-8(b) may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist."

SECTION 22. G.S. 78C-38(b) reads as rewritten:

"(b)

(1) Every person who directly or indirectly controls a person liable under subsection (a) of this section, including every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, ~~every employee or associate of such a person who materially aids in the conduct giving rise to the liability,~~ and every ~~dealer or salesman~~dealer or salesman who materially aids in ~~such~~ the conduct giving rise to the liability is liable jointly and severally with and to the same extent as ~~such~~ the person, unless able to sustain the burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable care ~~should~~ could not have ~~known~~ known, of the existence of the facts by reason of which the liability is alleged to exist.

(2) Unless liable under subdivision (1) of this subsection, every employee or associate of a person liable under subsection (a) of this section who materially aids in the conduct giving rise to the liability and every other person who materially aids in the conduct giving rise to the liability is liable jointly and severally with and to the same extent as the person if the employee or associate or other person actually knew of the existence of the facts by reason of which the liability is alleged to exist.

(3) There is contribution ~~as in cases of contract~~ among the several persons ~~so~~ liable under subdivision (1) and (2) of this subsection ~~and~~ as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

SECTION 23. G.S. 78C-38(d) reads as rewritten:

"(d) No person may sue under this section more than three years after the rendering of investment advice in violation of ~~this Chapter, except that in the case of a violation of G.S. 78C-8(a)(1) or (2) a person may sue under this section within two years after such person discovers or should have discovered, the facts constituting the violation.~~ G.S. 78C-16.

No person may sue under this section for any other violation of this Chapter more than three years after the person discovers facts constituting the violation, but in any case no later than five years after the rendering of investment advice, except that if a person who may be liable under this section engages in any fraudulent or deceitful act that conceals the violation or induces the person to forego or postpone commencing an action based upon the violation, the suit may be commenced not later than three years after the person discovers or should have discovered that the act was fraudulent or deceitful."

SECTION 24. G.S. 78C-38(g) reads as rewritten:

"(g) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78C-17(e). If the requirements of Chapter 1D of the General Statutes are met, punitive damages are available to the extent provided in that Chapter."

SECTION 25. G.S. 78C-39 reads as rewritten:

"**§ 78C-39. Criminal penalties.**

(a) Any person who willfully violates any provision of this Chapter except G.S. 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 is guilty of a Class I felony. ~~or who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon.~~

(a1) Any person who willfully violates any rule or order under this Chapter is guilty of a Class I felony. No person may be imprisoned for the violation of any rule if the person proves that the person had no knowledge of the rule. It is an affirmative defense to a charge of violating an order under this Chapter that the person had no knowledge of the order.

(a2) Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b) ~~shall, upon conviction, be punished as a Class H felon.~~is guilty of a felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a3) Any person who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect is guilty of a Class H felony. Any other willful violation of G.S. 78C-9 constitutes a Class 2 misdemeanor.

(a4) A person is guilty of a Class H felony if the person willfully does any of the following for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter:

(1) Makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement.

(2) Creates, causes to be made, or delivers any record, report, or document knowing that it is false or misleading in any material respect.

(3) Destroys or alters any record, report, or document.

(4) Conceals or secretes any record, report, or document.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of ~~such~~ a reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of ~~such~~ the violation or violations on behalf of the State. Upon approval

of the Administrator, ~~such~~ the employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of ~~such~~ the violations without receiving compensation from the district attorney. Such a special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to ~~such~~ the special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

SECTION 26. G.S. 78D-24(a) reads as rewritten:

"(a) Any person who willfully violates any provision of this Chapter ~~shall, upon conviction, be punished as a Class I felon.~~is guilty of a felony. If the losses caused by the violation or violations are one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the losses caused by the violation or violations are less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

SECTION 27. 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 and~~ Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators ~~Association~~ Association, Inc., for the purpose of promoting uniformity of state securities ~~regulation.~~regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter. 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 Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

SECTION 28. G.S. 143-59.1 reads as rewritten:

"**§ 143-59.1. Contracts with certain foreign vendors.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax

levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor if the vendor or an affiliate of the vendor ~~that is incorporated~~ incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the ~~corporation's stock.~~stock of the corporation incorporated in the tax haven country.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, ~~Cyprus,~~ Gibraltar, Isle of Man, ~~the Principality of Liechtenstein,~~ the Principality of Monaco, and the Republic of the Seychelles."

SECTION 29. Sections 11, 12, 25, and 26 of this act become effective December 1, 2003, and apply to acts committed on or after that date. Section 28 of this act becomes effective October 1, 2003, and applies to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 925:
Strengthen Security Fraud Enforcement Laws.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Rand
Date:	May 29, 2003	**Summary by:**	R. Erika Churchill
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 925 would strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators.***

Additionally the bill would prohibit the State from contracting with vendors that incorporate or reincorporate in a tax haven country after December 31, 2001, and the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.

CURRENT LAW:

Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions. This is true whether or not the company is chartered in NC and whether or not the security is registered in North Carolina. Generally, with a few exceptions, criminal violations of the securities fraud laws are punished as Class H felonies regardless of the amount of money involved. G.S. 78A-57. Civil liabilities provide that the statute of limitations for securities fraud is two years and punitive damages are not allowed. G.S.78A-56.

BILL ANALYSIS:

Section 1. The bill clarifies that the issuance of false or misleading securities analyses, reports or financial statements constitutes a deceptive or fraudulent manipulation of the market.

Sections 2, 4, and 20. The bill corrects an incorrect reference to GAAP (generally accepted accounting principles) accounting standards and allows the Securities Administrator to require audited financial statements, except when waived by the Administrator by rule or order. Section 4 also sets forth factors that the Securities Administrator must consider in the determination as to whether to permit the filing of unaudited financial statements.

Sections 3 and 19. The bill amends the securities dealers and investment advisors registration laws to prevent the withdrawal of an application after investigation of a person's qualifications for registration has begun by the Securities Administrator. This change will permit the Administrator to make an administrative determination that the person is not qualified for registration or is subject to revocation of registration, which may prevent a disqualified person from later registering or registering in another state.

Sections 5 and 7. The bill specifies the civil liabilities for market manipulation in violation of G.S. 78A-12 and defines the measure of damages, including punitive damages.

Section 6. The bill clarifies that the legal rate of interest under G.S. 24-1 applies to interest paid as damages.

Sections 8 and 22. The bill conforms and expands the liability of a person who controls another person who violates the Securities Act and the Investment Advisor Act and sets the standard as "in the exercise of reasonable care could have known."

Section 9. The bill extends the civil statute of limitations under the securities law from two (2) years after the date of the sale of the securities to three (3) years after the discovery of a violation, but in no event more than five (5) years. The only exception to this is for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three (3) years from discovery.

Sections 10 and 24. The bill amends the civil damages remedies sections to authorize the recovery of punitive damages consistent with Chapter 1D of the General Statutes in addition to actual damages arising from securities fraud.

Sections 11, 25, and 26. The bill increases the punishment for criminal violations of the Securities Act, the Investment Act and the Commodities Act where total consideration lost totals $100,000 or more from a Class H felony to a Class C felony. This change makes the punishment for these types of white-collar crimes consistent with the punishment for other similar white-collar crimes including embezzlement and obtaining property by false pretenses.

Section 12, and the new G.S. 78C-39(a3) in Section 25, makes it a Class H felony to willfully interfere with an investigation by the Securities Administrator. Willful interference includes the destruction of records. This statute is similar to the statute that makes it a crime to willfully interfere with an audit by the State Auditor that is punished as a Class 2 misdemeanor. G.S. 147-64.7A.

Sections 13 and 14. The bill corrects the jurisdiction section of the Securities Act to subject unlawful manipulation of the markets under G.S. 78A-12 to sanctions under the Act.

Section 15. The bill specifies that market manipulation applies when any act instrumental to effecting prohibited conduct is done in North Carolina.

Sections 16-17. The bill recodifies an exception for registration as an investment advisor of a person registered under federal law.

Section 23. The bill amends the statute of limitations under the Investment Advisers Act to correspond to the changes made in Section 9 of the bill to the Securities Act. Here, the three-year statute of limitations from the date of the rendering of the investment advice in violation of the law would be replaced by a period of three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three years from discovery.

Section 27. The bill amends a limited provision of the Administrative Procedures Act to authorize the Secretary of State to adopt temporary rules governing the conduct of administrative hearings.

Section 28. The bill prohibits the Secretary of Administration from entering into a contract with a vendor or an affiliate of a vendor if the vendor or affiliate is incorporated or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country. The definition of "tax haven country" is identical to the definition of the same term that was in federal legislation before Congress in 2002 that would prohibit the federal government from using defense-spending funds as payment on any new contracts with "corporate expatriates." This section also deletes Cyprus from the list of tax haven countries.

EFFECTIVE DATE: The criminal provisions of the bill become effective December 1, 2003. The State contracting provision is effective October 1, 2003. The remainder of the bill is effective when it becomes law.

O. Walker Reagan and Robin Johnson contributed substantially to this summary.

2003 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
S.B. 925 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD AND TO CLARIFY THE PROHIBITION ON STATE CONTRACTS WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

House Judiciary I Committee

June 10, 2003

Minutes

The House Judiciary I Committee met on Tuesday, June 10, 2003 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, Harrell, Insko, Miller, Ross, Sexton and West. A copy of the agenda and the Visitor Registration sheet is attached, (Attachments I and II).

Senator Berger was recognized to explain Senate Bill 1011, AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES, (Attachment III). A proposed committee substitute was distributed, (Attachment IV). Representative Harrell moved that it be adopted for the purpose of discussion. The motion carried.

Senator Berger said that the bill was introduced as a result of some concerns expressed regarding the lien law and that the committee substitute now before the committee was the result of negotiations between the hospital association and representatives of the chiropractors. He said that the attorneys group had reviewed the committee substitute and will comment on it.

Chairman Hackney said that the bill deals personal injury settlements. He said that an attorney typically receives the money from a settlement into his trust account and divides it up. He said that often times there will be medical lienholders who have not been paid for treating the injured person. He said there is a law regarding how those funds are distributed and that the law is the subject of a court of appeals decision. He said that the bill would provide that those medical providers can get the information as to how the settlement was done and if the settlement was confidential, it must be kept confidential.

Ms. Erika Churchill, Committee Counsel, was recognized to compare the committee substitute with the original bill, and to offer additional explanation. A copy of her bill analysis is attached, (Attachment V).

Mr. Hugh Tilson, North Carolina Hospital Association, was recognized and spoke in support of the bill.

Mr. Dick Taylor, North Carolina Academy of Trial Lawyers, said that much of the language that came out of the first section was to hold harmless the attorney from liability for the fees and costs for good faith action in distributing the monies according to

the lien law. He said the provision appears to take away the protection from attorney and the plaintiff who are following what they think the law is.

Representative Ross offered an amendment, (Attachment VI). Chairman Hackney separated the amendment for voting. The second part of the amendment, which was a technical correction was voted on first. It was adopted. The first part of the amendment regarded the deletion of the attorneys fees clause.

Representative Ross commented briefly on the amendment and asked for support.

Mr. Tilson stated that the Hospital Association was in support of the amendment.

Dr. Bob Stroud, Chiropractic Association, spoke in agreement with the amendment.

Upon vote of the committee, the first part of the amendment was adopted.

Representative Sexton moved a favorable report for a new House committee substitute incorporating the amendment and an unfavorable report to the Senate bill. The motion carried, (Attachment VII). A copy of the new committee substitute is attached, (Attachment VIII).

The meeting was adjourned.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY, JUNE 10, 2003
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 1011 – HEALTH CARE PROVIDER LIENS
SENATOR BERGER

ATTACHMENT II

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY I — June 10, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Tilson	NCHA
[illegible]	NCCA
[illegible]	NCCA
Bill [illegible]	NCATL
[illegible]	NCHA
Charlie Chrisawn	Poyner + Spruill
Karina Chapman	PPHS intern
Amy Dobson	NC Statewatch

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 3

SENATE BILL 1011
Judiciary I Committee Substitute Adopted 4/23/03
Third Edition Engrossed 4/24/03

Short Title: Health Care Provider Liens. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44-50 reads as rewritten:

"**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.**

(a) A lien ~~as provided~~ under G.S. 44-49 shall also attach upon all funds paid to any person in compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney represents the injured person, the lien is perfected as provided under G.S. 44-49. The lien claimant shall provide the attorney or other holder of funds with an itemized statement, hospital record, or medical report as provided in G.S. 44-49(b), and that statement shall have the same effect as in G.S. 44-49(b). Before their disbursement, any person that receives those funds shall retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for any drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or hospital, or hospital attention or services, after having received notice of those claims. Evidence as to the amount of the charges shall be competent in the trial of the action. Nothing in this section or in G.S. 44-49 shall ~~be construed so as to~~ interfere with any amount due for attorney's services. The lien provided for shall ~~in no case,~~ not, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of damages recovered.

(b) The funds subject to a lien under this Article shall be distributed to each lienholder according to that lienholder's pro rata share of those funds under this Article. The pro rata share of funds shall be based on the remaining balance due of the itemized statements, hospital records, or medical reports furnished to the attorney under G.S.

44-49(b) or subsection (a) of this section as the lienholder's charges to the injured person for supplies or services. ~~Except as provided in G.S. 44-51, a client's instructions for the disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to the extent that the instructions conflict with the requirements of this Article.~~ An attorney subject to this Article shall not be liable for payment to a lienholder as long as the attorney makes a pro rata distribution based on the balance due itemized statements, hospital records, or medical reports furnished to the attorney under G.S. 44-49(b) or subsection (a) of this section, nor shall the attorney be liable in the event of a good faith miscalculation of the perfected lien amount owing at the time of distribution. If the attorney's client or any other party disputes a claim as provided in G.S. 44-51, the attorney is not liable for pro rata distribution to the lienholder of the claim disputed under G.S. 44-51 until the dispute is resolved."

SECTION 2. Article 9 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Any person distributing funds to a lienholder under this Article in an amount less than the amount claimed by that lienholder shall provide to that lienholder upon written request a certification with sufficient information to demonstrate that the distribution was pro rata and consistent with this Article, including a statement of all of the following:

(1) The total amount of the settlement.

(2) The total distribution to lienholders and the percentage of each lien paid but not the identity of other lienholders.

(3) The total attorney's fees.

If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege. The lienholder shall have the same duty of confidentiality with the contents of the accounting as the attorney of the injured party.

(b) In an action brought by any party to enforce its rights under this Article, the presiding judge may award reasonable attorney's fees to be taxed against the nonprevailing party as part of court costs and payable to the prevailing party.

(c) Nothing in this section shall be construed to require any person to act contrary to the requirements of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and regulations adopted pursuant to that act.

(d) Notwithstanding any confidentiality agreement entered into between the injured person and the payor of proceeds as compensation for or settlement of injuries, the provisions of this Article shall preempt that confidentiality agreement, but only in cases where the claimed lienholders under this Article would receive less than their claimed lien amount."

SECTION 3. This act is effective when it becomes law and applies to any liens perfected on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 1011
Judiciary I Committee Substitute Adopted 4/23/03
Third Edition Engrossed 4/24/03
PROPOSED COMMITTEE SUBSTITUTE S1011-CSST-53 [v.2]

6/10/2003 9:40:47 AM

Short Title: Health Care Provider Liens. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW A LIENHOLDER TO REQUEST AN ACCOUNTING OF DISBURSEMENTS OF SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Notwithstanding any confidentiality agreement entered into between the injured person and the payor of proceeds as settlement of compensation for injuries, upon the lienholder's written request and the lienholder's written agreement to be bound by any confidentiality agreements regarding the contents of the accounting, any person distributing funds to a lienholder under this Article in an amount less than the amount claimed by that lienholder shall provide to that lienholder a certification with sufficient information to demonstrate that the distribution was pro rata and consistent with this Article. If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege.

(b) The certification under subsection (a) of this section shall include a statement of all of the following:

(1) The total amount of the settlement.

(2) The total distribution to lienholders, the amount of each lien claimed, and the percentage of each lien paid.

(3) The total attorney's fees.

(c) In an action brought by any party to enforce its rights under this Article, the presiding judge may award reasonable attorney's fees to be taxed against the nonprevailing party as part of court costs and payable to the prevailing party.

(d) Nothing in this Article shall be construed to require any person to act contrary to the requirements of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, and regulations adopted pursuant to that Act."

SECTION 3. This act becomes effective October 1, 2003 and applies to any liens perfected on or after that date.

SENATE BILL 1011: Health Care Provider Liens.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Berger
Date:	May 27, 2003	**Summary by:**	R. Erika Churchill
Version:	S1011-CSST-53 v.2		Committee Co-Counsel

SUMMARY: The proposed committee substitute for Senate Bill 1011 would clarify how persons in charge of distributing monies recovered for personal injury claims are to be distributed to health care provider lienholders where there is more than one lienholder.

CURRENT LAW: Chapter 44 of the General Statutes set forth a system of liens, including liens for providers of health supplies and services, against damages received by injured parties in personal injury lawsuits and otherwise. *Article 9 of Ch. 44.* For a provider's lien to be valid, the provider must give to the person to whom the settlement or recovery is paid an itemized statement of costs incurred and other records. *G.S. 44-49.* That person, who is generally an attorney for the injured party, is directed to distribute the money to the valid lienholders. *G.S. 44-50.* The statutes are silent on how monies are to be distributed if there are more than one lienholder. Earlier this year, the North Carolina Court of Appeals ruled that because the statute did not prescribe pro rata distribution, and attorney was not obligated to distribute funds in a pro rata manner. *N.C. Baptist Hospitals Inc. v. Crowson, 573 S.E.2d 922, 2003 N.C. App. 4 (2003).* This case is now on appeal to the Supreme Court.

BILL ANALYSIS:

Section 1.

- **Accounting and Confidentiality.** The proposed committee substitute would give a lienholder who received less than the full amount of the lien the ability to request a written accounting of the damage proceeds distributed, showing percentages. The lienholder who receives that accounting shall be bound by any confidentiality agreements entered into regarding the settlement. If the person doing the distributing is an attorney, making the accounting is not a breach of attorney-client privilege.
- **Attorney's Fees.** The proposed committee substitute states that a judge has the authority to grant attorney's fees to anyone who litigates to enforce any rights under Article 9. Those attorney's fees would be taxed as part of court costs and paid by the nonprevailing party to the prevailing party.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply to liens perfected on or after that date.

*Bill Gilkeson contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **ATTACHMENT VI**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-10

S. B. No. 1011 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Ross
Sen.)

moves to amend the bill on page 2, lines 1-3

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the remaining subsection accordingly;

and on page 2, line 7 by deleting the phrase "SECTION 3" and substituting the phrase "SECTION 2".

SIGNED _____

ADOPTED ✓ in two parts FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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
S.B. 1011 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DUTIES OF PERSONS WHO RECEIVE FOR DISTRIBUTION SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1011
Judiciary I Committee Substitute Adopted 4/23/03
Third Edition Engrossed 4/24/03
PROPOSED COMMITTEE SUBSTITUTE S1011-PCS55197-ST-53

Short Title: Health Care Provider Liens. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW A LIENHOLDER TO REQUEST AN ACCOUNTING OF DISBURSEMENTS OF SUMS RECOVERED FOR PERSONAL INJURY WITH RESPECT TO LIENS IN FAVOR OF PROVIDERS OF HEALTH-RELATED GOODS AND SERVICES.

The General Assembly of North Carolina enacts:

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"**§ 44-50.1. Accounting of disbursements; attorney's fees to enforce lien rights.**

(a) Notwithstanding any confidentiality agreement entered into between the injured person and the payor of proceeds as settlement of compensation for injuries, upon the lienholder's written request and the lienholder's written agreement to be bound by any confidentiality agreements regarding the contents of the accounting, any person distributing funds to a lienholder under this Article in an amount less than the amount claimed by that lienholder shall provide to that lienholder a certification with sufficient information to demonstrate that the distribution was pro rata and consistent with this Article. If the person distributing settlement or judgment proceeds is an attorney, the accounting required by this section is not a breach of the attorney-client privilege.

(b) The certification under subsection (a) of this section shall include a statement of all of the following:

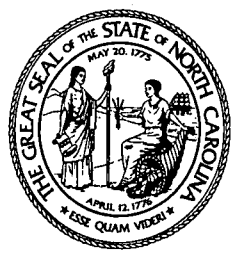
(1) The total amount of the settlement.

(2) The total distribution to lienholders, the amount of each lien claimed, and the percentage of each lien paid.

(3) The total attorney's fees.

(c) Nothing in this Article shall be construed to require any person to act contrary to the requirements of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, and regulations adopted pursuant to that Act."

SECTION 2. This act becomes effective October 1, 2003, and applies to any liens perfected on or after that date.



House Judiciary I

Representative Joe Hackney
Chairman

Representative Deborah Ross
Vice Chairman

2004 Short Session

Emily Reynolds Freeman
Committee Assistant

HOUSE JUDICIARY I COMMITTEE

2003-2004 SESSION

MEMBERSHIP

NAME	OFFICE	PHONE	LEGISLATIVE ASSISTANT
REPRESENTATIVE JOE HACKNEY, CHAIRMAN	2207	733-5752	EMILY FREEMAN
REPRESENTATIVE DEBORAH ROSS, VICE CHAIR	2223	733-5773	DELORES LEDFORD
REPRESENTATIVE MARTHA ALEXANDER	2208	733-5807	ANN FAUST
REPRESENTATIVE RUSSELL CAPPS	501	733-5903	NANCY FOX
REPRESENTATIVE DEBBIE CLARY	303B	715-2002	SHIRLEY WINSTEAD
REPRESENTATIVE LEO DAUGHTRY	1209	733-5605	BERNICE BULLARD
REPRESENTATIVE SUSAN FISHER	420	715-2013	MEREDITH WOODLIEF
REPRESENTATIVE VERLA INSKO	2121	733-7208	PAM EVANS
REPRESENTATIVE PAUL MILLER	640	733-5872	ERYN GEE
REPRESENTATIVE WAYNE SEXTON	609	733-5607	DEBBIE TURNER
REPRESENTATIVE ROGER WEST	1004	733-5859	LINDA C. JOHNSON
REPRESENTATIVE STEVE WOOD	2119	733-5771	WENDY MILLER

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY I COMMITTEE

2003 – 2004 SESSION



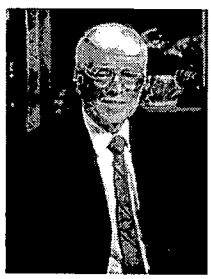
Representative Joe Hackney
Chair



Rep. Deborah Ross
Vice chair



Rep. Martha Alexander



Rep. Russell Capps



Rep. Debbie Clary



Rep. Leo Daughtry



Rep. Susan. Fisher



Rep. Verla Insko



Rep. Paul Miller



Rep. Wayne Sexton



Rep. Roger West



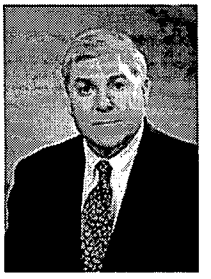
Rep. Steve Wood

HOUSE JUDICIARY I COMMITTEE

2003 – 2004 SESSION



Rep. Brubaker
Ex-officio



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio

HOUSE JUDICIARY I COMMITTEE

2003-2004 SESSION

STAFF

NAME	Office	Telephone
SUSAN SITZE COMMITTEE COUNSEL	201DD LOB	733-2578
ERIKA CHURCHILL COMMITTEE COUNSEL	545 LOB	733-2578
EMILY REYNOLDS FREEMAN COMMITTEE ASSISTANT	2207 LB	733-5752

ATTENDANCE

HOUSE JUDICIARY I COMMITTEE (2004 Session)

(Name of Committee)

DATES	5/25	6/15	6/22	6/29	7/1	7/8	7/12								
Representative Hackney, Chairman	✓	✓	✓	✓	✓	✓	✓								
Representative Ross, Vice Chair	✓		✓	✓	✓	✓	✓								
Representative Alexander	✓	✓	✓	✓	✓										
Representative Capps	✓	✓		✓	✓	✓	✓								
Representative Clary															
Representative Daughtry															
Representative Fisher	✓	✓	✓	✓	✓	✓	✓								
Representative Insko	✓	✓		✓	✓	✓	✓								
Representative Miller															
Representative Sexton	✓		✓	✓	✓	✓									
Representative West	✓	✓	✓	✓	✓	✓	✓								
Representative Wood	✓	✓	✓												
Rep. Culpepper, Ex-officio															
Rep. Cunningham, Ex-officio															
Rep. Eddins, Ex-officio															

2003-2004 Biennium

Leg. Day: H-147/S-149

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0011	Stam	BAN SEXUALLY EXPLICIT CONDUCT.	*H	Ref To Com On Rules, Calendar, and Operations of the House	02-13-03	03-04-03
H0027	Rhodes	EXPAND DNA DATABANK/ ALL FELONIES.	H	Ref To Com On Judiciary I	02-17-03	
H0033	Luebke	PRIVATE PROSECUTION/ FELONY OFFENSES.	H	Ref To Com On Judiciary I	02-18-03	
H0079=	Alexander	DNA REGISTRY.	*HR	Ch. SL 2003-376	02-25-03	04-08-03
H0379	Bell	EDUCATIONAL CONDITIONS TO PUNISHMENT.	*H	Ref To Com On Education/Higher Education	03-10-03	03-26-03
H0408	Hackney	AMEND SECRET PEEPING LAW.	*HR	Ch. SL 2003-303	03-12-03	03-27-03
H0461	Alexander	INTERPRETER LICENSURE EFFECTIVE DATE.	HR	Ch. SL 2003-56	03-13-03	03-20-03
H0471=	Crawford	CDL CHANGES/STUDY MOPED TAG IDENTIFICATION.	*H	Re-ref Com On Appropriations/ Base Budget	04-30-03	05-15-03
H0475	Alexander	REGISTRATION OF BIRTH & DEATH CERTIFICATES.	HR	Ch. SL 2003-60	03-13-03	03-20-03
H0509=	Alexander	FAILURE TO APPEAR/ CITATION.	H	Ref To Com On Judiciary I	03-17-03	
H0562	Alexander	CHARLOTTE PHOTO SPEED-MEASURING SYSTEMS.	*HR	Ch. SL 2003-280	03-20-03	04-28-03
H0676	Luebke	DURHAM BENEFITS.	H	Ref To Com On Judiciary I	03-26-03	
H0826=	Insko	AMEND MH CONFIDENTIALITY STATUTES.	*HR	Ch. SL 2003-313	04-09-03	04-22-03
H0830	Hilton	ABORTION-PARENTAL CONSENT NOTARIZED.	H	Re-ref Com On Rules, Calendar, and Operations of the House	04-02-03	04-29-03
H0840=	Alexander	CLARIFY DEFINITION OF PROTECTIVE ORDER.	H	Ref To Com On Judiciary I	04-02-03	
H0846=	Alexander	ILLEGAL CHILD CARE FACILITIES.	H	Ref To Com On Judiciary I	04-03-03	
H0877	Hackney	CLARIFY POSTSEPARATION SUPPORT LAWS.	H	Ref To Com On Judiciary I	04-07-03	
H0879	Crawford	STATE PERSONNEL ACT CHANGES.	H	Re-ref Com On Judiciary I	04-29-03	
H0880=	Justus	DWI BLOOD TEST RESULT-DIRECTLY TO CLERK.	*H	Re-ref Com On Judiciary I	04-23-03	
H0899=	Gibson	SOLICITING SUTA DUMPING A FELONY.	H	Ref To Com On Judiciary I	04-07-03	
H0911	Eddins	NO PROFIT FROM CRIME.	H	Re-ref Com On Judiciary IV	04-08-03	05-07-03
H0950	Hackney	JUVENILE COMMITMENT TO DJJDP.	*HR	Ch. SL 2003-53	04-08-03	04-29-03
H0951	Hackney	CREATE CIVIL NO-CONTACT PROTECTIVE ORDERS.	*H	Pres. To Gov. 7/ 14/2004	04-08-03	04-30-03
H0952	Hackney	CLARIFYING CHANGE/ FAMILY LAW	HR	Ch. SL 2003-61	04-08-03	04-22-03

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2003-2004 Biennium

Leg. Day: H-147/S-149

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ARBITRATION ACT.				
992	Insko	DEBT SETOFF FOR HOSPITAL SERVICES.	*H	Re-ref Com On Appropriations	04-09-03	04-23-03
H0999=	Hackney	TONER/INKJET CARTRIDGES.	*HR	Ch. SL 2003-386	04-10-03	04-23-03
H1018	Allred	DEFENDANTS COSTS IN CONDEMNATION AWARDS.	H	Ref To Com On Judiciary I	04-10-03	
H1037	Luebke	AMEND JUVENILE LAW.	*HR	Ch. SL 2003-297	04-10-03	04-29-03
H1040=	Sauls	TONER/INKJET CARTRIDGES.	H	Ref To Com On Judiciary I	04-10-03	
H1044=	Hackney	SEXUAL BATTERY.	H	Ref To Com On Judiciary I	04-10-03	
H1046	Hackney	AGGRESSIVE DRIVING.	*H	Pres. To Gov. 7/16/2004	04-10-03	04-23-03
H1047	Hackney	ABOLISH ALIENATION OF AFFECTION/CRIM. CONV.	H	Re-ref Com On Rules and Operations of the Senate	04-10-03	04-28-03
H1048	Ross	JUVENILE CODE REVISIONS/CT. IMPROVEMENT PROJ.	*HR	Ch. SL 2003-140	04-10-03	04-24-03
H1106	Starnes	FETAL HOMICIDE.	H	Ref To Com On Judiciary I	04-10-03	
H1125	Hackney	UNIFORM TERMS FOR JUDGES.	H	Ref To Com On Judiciary I	04-10-03	
H1126	Hackney	COLLABORATIVE LAW PROCEDURES/FAMILY LAW.	*HR	Ch. SL 2003-371	04-10-03	04-23-03
H1139	Ellis	RAPIST PARENTAL RIGHTS/OPEN CRIM. DISCOVERY.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	07-07-04	07-12-04
H1186	Luebke	SPEEDING BY LAW ENFORCEMENT OFFICERS.	H	Ref To Com On Judiciary I	04-10-03	
H1199=	Luebke	MORATORIUM ON EXECUTIONS FOR TWO YEARS.	H	Ref To Com On Judiciary I	04-10-03	
H1219	Hackney	CLARIFY DEF. OF DIVISIBLE PROPERTY/ EQU. DIST.	H	Ref To Com On Judiciary II	04-10-03	04-24-03
H1325	Gibson	LINE-ITEM VETO.	H	Ref To Com On Judiciary I	05-15-03	
H1366	Insko	INVOLUNTARY COMMITMENT WARRANT CLARIFICATION.	HR	Ch. SL 2004-23	05-13-04	05-25-04
H1449=	Fisher	APA TECHNICAL/ CLARIFYING CHANGES.	*HR	Ch. SL 2004-156	05-17-04	06-15-04
$ H1522	**Weiss**	**ADULT CARE HOMES CRIMINAL RECORDS CHECK/PILOT.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-19-04**	
$ H1523	**Weiss**	**CRIMINAL BACKG. CHECKS - LONG-TERM CARE.**	**H**	**Ref to the Com on Judiciary I and, if favorable, to the Com on Appropriations**	**05-19-04**	

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1530=	Culpepper	CONDO AND PLANNED COMM. CLARIFICATIONS.	H	Re-ref Com On Judiciary I	06-14-04	
[illegible]766	**Wright**	**STATEWIDE CRIM. JUSTICE TRUTH COMMISSION.**	**H**	**Ref To Com On Judiciary I**	**05-31-04**	
S0052	Daniel G. Clodfe	CLARIFICATIONS REGARDING MEDIATION	*HR	Ch. SL 2004-154	05-01-03	07-13-04
S0326=	David W. Hoyle	DETERRING SUTA DUMPING.	*HR	Ch. SL 2003-67	04-24-03	05-12-03
S0390	Fletcher L. Hart	MODERNIZE JUDGMENT DOCKETING LAWS.	H	Ref To Com On Judiciary I	04-15-03	
S0394	Tony Rand	EQU. DIS. CLAIM SURVIVE DEATH SPOUSE/ LIMIT.	*HR	Ch. SL 2003-168	04-17-03	05-13-03
S0440=	Daniel G. Clodfe	FAILURE TO APPEAR/ CITATION.	HR	Ch. SL 2003-15	03-31-03	04-03-03
S0449	Joe Sam Queen	EVIDENCE-DWI BLOOD WITHDRAWAL VALID.	*HR	Ch. SL 2003-95	04-29-03	05-13-03
S0539	Tony Rand	STATE BAR AMENDMENTS.	*HR	Ch. SL 2003-116	04-08-03	05-13-03
S0619=	Tom Apodaca	DWI BLOOD TEST RESULT-DIRECTLY TO CLERK.	*HR	Ch. SL 2003-104	04-22-03	05-15-03
S0629	Daniel G. Clodfe	CLARIFY SUBORDINATION AGREEMENT REQUIREMENTS.	*HR	Ch. SL 2003-219	04-24-03	05-27-03
S0630=	Daniel G. Clodfe	CLARIFY DEFINITION OF PROTECTIVE ORDER.	*HR	Ch. SL 2003-107	04-16-03	05-12-03
S0708	Fern Shubert	FIRE DEPT. CRIM. BACKGROUND CHECKS.	*HR	Ch. SL 2003-182	04-29-03	05-27-03
S0718	Kay R. Hagan	AMEND DOMESTIC VIOLENCE LAWS/TEMP. CUSTODY.	*H	Ref To Com On Judiciary I	05-01-03	
S0877=	William R. Purce	CHILD CARE FACILITIES/ PENALTIES.	*HR	Ch. SL 2003-192	05-01-03	05-20-03
S0912=	Daniel G. Clodfe	SEXUAL BATTERY.	*HR	Ch. SL 2003-252	04-24-03	05-22-03
S0916	Daniel G. Clodfe	PREVENT WORKPLACE VIOLENCE.	*HR	Ch. SL 2004-165	05-05-03	07-08-04
S0919	Tony Rand	HOMICIDE PREVENTION ACT/DOMESTIC VIOLENCE.	*HR	Ch. SL 2003-410	05-01-03	05-07-03
S0925	Tony Rand	STRENGTHEN SECURITY FRAUD ENFORCEMENT LAWS.	*HR	Ch. SL 2003-413	04-29-03	06-04-03
S1011	Philip E. Berger	HEALTH CARE PROVIDER LIENS.	*HR	Ch. SL 2003-309	04-29-03	06-11-03
S1167=	Fletcher L. Hart	CONDO AND PLANNED COMM. CLARIFICATIONS.	*HR	Ch. SL 2004-109	06-14-04	06-22-04

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Order of Consideration

(by Bill number)

2004 Short Session

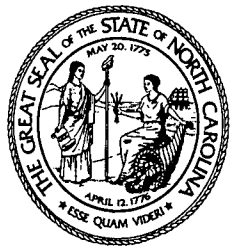
House Bill 1139	July 12, 2004
House Bill 1167	June 22, 2004
House Bill 1366	May 25, 2004
House Bill 1449	May 25 and June 15, 2004
Senate Bill 52	July 8 and July 12, 2004
Senate Bill 916	July 1 and July 8, 2004

Order of Consideration

(by Date)

2004 Short Session

May 25, 2004	House Bill 1366 House Bill 1449
June 15, 2004	House Bill 1449
June 22, 2004	House Bill 1167
June 29, 2004	House Bill 1766 Senate Bill 916
July 1, 2004	Senate Bill 916
July 8, 2004	Senate Bill 52 Senate Bill 916
July 12, 2004	House Bill 1139 Senate Bill 52



House Judiciary I

2004 Short Session

MINUTES

House Judiciary I Committee

May 25, 2004

Minutes

The House Judiciary I Committee met on Tuesday, May 25 2004, 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, Capps, Fisher, Insko, Ross, Sexton, West, and Wood. A copy of the agenda and the Visitor Registration sheets are attached (Attachments I and II).

Rep. Hackney welcomed the members back to the first meeting of the 2004 Short Session and welcomed new member, Representative Fisher, who was recently appointed to serve on the Committee, replacing Representative Harrell. He introduced the pages and sergeants-at-arms.

Susan Sitze, Committee Counsel, was recognized by the Chair to explain House Hill 1366, AN ACT TO PROVIDE THAT AN ORDER ISSUED BY THE CLERK OF COURT FOR CUSTODY RELATING TO INVOLUNTARY COMMITMENT IS VALID THROUGHOUT THE STATE, (Attachment III). Ms. Sitze explained the bill, which addresses the issue of involuntary commitment orders. She cited an instance whereby a problem had occurred when a person left Durham and came to Wake County. This bill changes the current Statutes to avoid future problems and provides that involuntary commitment orders are valid throughout the State. There was discussion concerning any costs that might be involved and, if any, which county would bear it. A copy of the bill summary is attached, (Attachment IV

Rep. Ross moved to give the bill a favorable report. The motion passed unanimously, (Attachment V).

Rep. Hackney recognized Rep. Fisher, for an explanation of House Bill 1449, AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, (Attachment VI). Rep. Fisher presented the bill and recognized Karen Cochrane-Brown, Committee Counsel, to explain the bill. The Joint Legislative Administrative Procedure Oversight Committee recommended changes that have been incorporated into the bill. Ms. Cochrane-Brown's summary of the bill is attached (Attachment VII).

Rep. Hackney asked Ms. Cochrane-Brown to give a line-by-line explanation of the bill. She said that Section 1 restructures GS 150B-21, the procedure for an agency to follow in adopting a temporary rule under the Administrative Procedure Act. Ms. Cochrane-Brown said that the last General Assembly made some major changes to the APA regarding the rule-making provision that restructured and reorganized temporary rule making. She noted that previously, a rule could go into effect almost immediately, but that last year that process was changed to require that proposed temporary rules, as well as permanent rules, be given notice and hearing in a more expeditious manner. The

entire section was restructured. She said that another bill was enacted that added additional rule- making authority, but because the two bills have overlapped, the numbering has gotten out of order. This bill amends the temporary rule section to conform the numbering. Section 1 of this bill restructures GS 150B-21.1 to fix the problem. The other change is on page 3 of the bill, lines 33-35. This was language that had been in the law previously, but inadvertently deleted last year, so it has been reinserted. Ms. Cochrane-Brown said that Section 2 of the bill clarifies that when persons object to a rule they must do so to the Rules Commission on or before the date the Commission considers the rule. She noted that another change in last year's law provided that if there is no objection to a permanent rule, that rule could go into effect on the first day of the month following the day it is approved by the Rules Review Commission. She said that under the previous law all rules were delayed until the 30th legislative day so that the legislature could have an opportunity to introduce a bill to disapprove the rule if there was a problem with it. She noted that there were very few rules that generated enough controversy to have a bill introduced. The process was changed to allow the bills to go into effect immediately after review by the Rules Review Commission unless 10 or more people filed objection with the Commission. The objections had to be received by the Rules Review Commission by the time they consider the rule. The Commission interpreted that a little differently and extended that time to six days beyond the day they considered it. House Bill 1499 bill clarifies that to make it clear that they have to receive those objections on or before the date the rule is reviewed by the Commission.

There was much discussion concerning the bill and the timing of receipt of a rule by the Rules Review Commission. Mr. Joe DeLuca of the Rules Review Commission and Ms. Molly Masich, Director of APA Services for the Office of Administrative Hearing, were recognized and spoke to the issue. Recommended changes in wording were put forth by Committee members, but each presented its own possible problems. Representative Hackney said that because there were so many questions and concerns about wording, a vote would be delayed to allow further study of the bill. It will be taken up at a later meeting.

The meeting was adjourned at 10:45 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Assistant

HOUSE JUDICIARY I COMMITTEE
TUESDAY MAY 25, 2004
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1366 – INVOLUNTARY COMMITMENT WARRANT CLARIFICATION
REPRESENTATIVE INSKO

HOUSE BILL 1449 – APA TECHNICAL/CLARIFYING CHANGES
REPRESENTATIVE FISHER

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

May 25, 2004 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Gurganus	NC Bar Association
Camille Stell	Kennedy Covington
Molly Masich	OAH
Joe DeLuca	Rules Review Commission NC RRC
Joan Troy	NC WRC
Leslie Bevacqua Coman	NCCBI
Bonnie Morell	NC Div MH/DD/SAS
Mimi A. Costa	NCSA
Grady Madin	NC Conservation Network.
Johanna Reese	DENR
Elizabeth Self	Intern, Rep. Ross
Lindsay Allen	Nurse of the Day
Stephen Keene	NC Medical Society
Kim Gibbard	NCLM

VISITOR

Name	Firm or Agency and Address
R. Paul Wilms	NCMBA
Stephanie Simpson	NCAR
John Rusk	NCAPC

VISITOR REGISTRATION SHEET

House Judiciary I — May 25, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Oversight Com NCHDDSAS
Bob Fitzgerald	DHHS/DFS
Mary Thomsen	RBSIC
Rick Zechini	NC Assoc. of Realtors
John Cyrus	NC State Troop
John Metthey	Gov office
Joe Delk	Gov Office
[signature]	NCMS
HUGH TILSON	NCHA
[signature]	[signature]
Andy Ellen	NCRMA
Chad Essick	Poyner & Spruill LLP
[signature]	NCCCS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1366

Short Title:	Involuntary Commitment Warrant Clarification.	(Public)
Sponsors:	Representatives Insko; Weiss, Parmon, and Farmer-Butterfield.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ORDER ISSUED BY THE CLERK OF COURT, THE MAGISTRATE, OR THE COURT FOR CUSTODY RELATING TO INVOLUNTARY COMMITMENT IS VALID THROUGHOUT THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 122C-261(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 1.(b) G.S. 122C-281(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate, a law-enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed. The custody order is valid throughout the State."

SECTION 2.(a) G.S. 122C-265(a) reads as rewritten:

"**§ 122C-265. Outpatient commitment; examination and treatment pending hearing.**

(a) If a respondent, who has been recommended for outpatient commitment by an examining physician or eligible psychologist different from the proposed outpatient treatment physician or center, fails to appear for examination by the proposed outpatient treatment physician or center at the designated time, the physician or center shall notify the clerk of superior court who shall issue an order to a law-enforcement officer or other person authorized under G.S. 122C-251 to take the respondent into custody and take him immediately to the outpatient treatment physician or center for evaluation. The custody order is valid throughout the State. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination."

SECTION 2.(b) G.S. 122C-273(a)(2) reads as rewritten:

"§ 122C-273. **Duties for follow-up on commitment order.**

(a) Unless prohibited by Chapter 90 of the General Statutes, if the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer, or the center may administer, to the respondent reasonable and appropriate medication and treatment that are consistent with accepted medical standards.

...

(2) If the respondent fails to comply, but does not clearly refuse to comply, with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance, the physician, the physician's designee, or the center may request the court to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk shall issue an order to a law-enforcement officer to take the respondent into custody and to take him immediately to the designated outpatient treatment physician or center for examination. The custody order is valid throughout the State. The law-enforcement officer shall turn the respondent over to the custody of the physician or center who shall conduct the examination and then release the respondent. The law-enforcement officer may wait during the examination and return the respondent to his home after the examination. An examination conducted under this subsection in which a physician or eligible psychologist determines that the respondent meets the criteria for inpatient commitment may be substituted for the first examination required by G.S. 122C-263 if the clerk or magistrate issues a custody order within six hours after the examination was performed.

...."

SECTION 2.(c) G.S. 122C-290(b) reads as rewritten:

"(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The custody order is valid throughout the State. The law enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291."

SECTION 3. This act is effective when it becomes law.

ATTACHMENT IV

HOUSE BILL 1366:
Involuntary Commitment Warrant Clarification

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Verla Insko
Date:	May 25, 2004	**Summary by:**	Susan L. Sitze
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1366 clarifies that involuntary commitment orders are valid throughout the State.***

BILL ANALYSIS: House Bill 1366 makes changes to several statutes related to involuntary commitment in Chapter 122C of the General Statutes. The bill clarifies that a custody order related to involuntary commitment that is issued by a clerk of court, magistrate, or court is valid throughout the State.

The act is effective when it becomes law.

2003 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. 1366 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT AN ORDER ISSUED BY THE CLERK OF COURT, THE MAGISTRATE, OR THE COURT FOR CUSTODY RELATING TO INVOLUNTARY COMMITMENT IS VALID THROUGHOUT THE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 1

HOUSE BILL 1449*

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors: Representative Fisher.

Referred to: Judiciary I.

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A recent federal regulation.
(5) A recent court order.
(6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.
(7) The need for the Wildlife Resources Commission to establish any of the following:
    a. No wake zones.
    b. Hunting or fishing seasons.
    c. Hunting or fishing bag limits.
    d. Management of public game lands as defined in G.S. 113-129(8a).
(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been

officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~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 Department 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.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least

three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, on or before the date it reviews the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. This act is effective when it becomes law.

ATTACHMENT VII

HOUSE BILL 1449:
APA Technical/Clarifying Changes.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Susan Fisher
Date:	May 25, 2005	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Staff Attorney

SUMMARY: ***This bill makes technical changes to conform the formatting of the temporary rule section of the Administrative Procedure Act (APA). It also clarifies that written objections requesting legislative review of a rule must be received on or before the date the Rules Review Commission reviews the rule. The Joint Legislative Administrative Procedure Oversight Committee recommended this bill.***

BILL ANALYSIS:

In 2003, the General Assembly enacted House Bill 1151 which made major changes to the rule-making provisions of the APA. House Bill 1151 substantially rewrote G.S. 150B-21.1 which sets forth the procedure for adopting a temporary rule. After the enactment of House Bill 1151, another bill amended the temporary rulemaking section without conforming to the changes made by House Bill 1151. As a result, the numbering of the section is now inconsistent. This bill makes technical amendments to the temporary rule section to conform the numbering. The bill also restores language that was inadvertently deleted by last year's bill.

In addition, the bill clarifies that written objections requesting legislative review of a rule must be received on or before the date the Rules Review Commission reviews the rule.

This bill would become effective when it becomes law.

House Judiciary I Committee

June 15, 2004

Minutes

The House Judiciary I Committee met on Tuesday, June 15, 2004 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, Capps, Fisher, Insko, West, and Wood. A copy of the agenda and the Visitor Registration sheets are attached (Attachments I and II).

Representative Fisher was recognized to continue the discussion of House Bill 1449, AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, (Attachment III). The bill was explained and discussed during the May 25 meeting of the committee. A copy of the bill summary is attached, (Attachment IV). Representative Fisher offered and proposed committee substitute, (Attachment V), and moved that it be adopted for the purpose of discussion. The motion carried. Representative Fisher reminded the Committee that the bill makes technical changes to conform the formatting of the temporary rules section of the Administrative Procedure Act and clarifies written objections. She said that the proposed committee substitute goes further in clarifying the written objections that come before the Rules Commission. She said that the changes in the committee substitute occurs on page 5, lines 18 and 19 where the words "no later than 5:00 pm of the day following the day the Commission approves the rule" are inserted.

Chairman Hackney stated that the changes reflected much discussion from many people who were involved in the proposed legislation.

Ms. Karen-Cochrane Brown, Staff Attorney, responded to questions.

Representative West asked what would happen if a rule was approved on a Friday. Chairman Hackney replied that objections would have to be received by 5:00 pm on Monday.

Representative Fisher moved a favorable report for the proposed committee substitute and an unfavorable report for the original bill.

Ms. Erika Churchill, Staff Attorney, pointed out that a technical change was needed on page 5, line 19 to change pm to P.M. Chairman Hackney stated that the change would be made as a technical change without an amendment.

Upon vote of the committee, the proposed committee substitute was given a favorable report, (Attachment VI). A copy of the committee substitute with the technical change incorporated into it is attached, (Attachment VII).

The meeting was adjourned at 10:25 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY JUNE 15, 2004
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1449 – APA TECHNICAL/CLARIFYING CHANGES
REPRESENTATIVE FISHER

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — June 15, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHSA
W Pfully	Pullen, Watson & L
M. Smith	NCSA
Chad Essick	Poyner & Spruill LLP
Stacy Flannery	NCHCFA
C Porter	Smith Anderson.
Rob Schum	HHS
Johanna Reese	DENR
Leslie Bevacqua Cornn	NCCBI
Sandra Lono	Martin Marietta
Jimmy Fullwright	Ammon & Wms.

VISITOR REGISTRATION SHEET

House Judiciary I — June 15, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anita Watkins	NCLM
Kim Hibbard	NCLM
Camille Stell	KCLH
[illegible]	Atlanta - Rely
[illegible]	MFHS
Elizabeth Self	House Intern
Rich Webb	House Intern
Mary Catherine Hackney	House Intern

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1449*

Short Title:	APA Technical/Clarifying Changes.	(Public)
Sponsors:	Representative Fisher.	
Referred to:	Judiciary I.	

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been

officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~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 Department 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.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least

three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, on or before the date it reviews the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. This act is effective when it becomes law.

ATTACHMENT IV

HOUSE BILL 1449:
APA Technical/Clarifying Changes.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Susan Fisher
Date:	May 25, 2005	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Staff Attorney

SUMMARY: ***This bill makes technical changes to conform the formatting of the temporary rule section of the Administrative Procedure Act (APA). It also clarifies that written objections requesting legislative review of a rule must be received on or before the date the Rules Review Commission reviews the rule. The Joint Legislative Administrative Procedure Oversight Committee recommended this bill.***

BILL ANALYSIS:

In 2003, the General Assembly enacted House Bill 1151 which made major changes to the rule-making provisions of the APA. House Bill 1151 substantially rewrote G.S. 150B-21.1 which sets forth the procedure for adopting a temporary rule. After the enactment of House Bill 1151, another bill amended the temporary rulemaking section without conforming to the changes made by House Bill 1151. As a result, the numbering of the section is now inconsistent. This bill makes technical amendments to the temporary rule section to conform the numbering. The bill also restores language that was inadvertently deleted by last year's bill.

In addition, the bill clarifies that written objections requesting legislative review of a rule must be received on or before the date the Rules Review Commission reviews the rule.

This bill would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1449*
PROPOSED COMMITTEE SUBSTITUTE H1449-CSRO-39 [v.1]

6/15/2004 9:50:15 AM

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General

Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~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 Department 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.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least

three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, no later than 5:00 pm of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. This act is effective when it becomes law.

2003 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. 1449 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE 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 the committee substitute bill (# 1), ☐ ~~which changes the title~~, unfavorable as to (the original bill) ~~(Committee Substitute Bill # ———), (and recommendation that the committee substitute bill # ———) be re-referred to the Committee on ———.)~~

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H D

HOUSE BILL 1449*
PROPOSED COMMITTEE SUBSTITUTE H1449-PCS50423-RO-39

Short Title: APA Technical/Clarifying Changes. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General

Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13) (14) Reserved.

(15) The need for the Department of Health and Human Services to adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program.

~~(a1)~~ (16) **(Expires July 1, 2005)** ~~Notwithstanding the provisions of subsection (a) of this section,~~ The need for the Department of Transportation ~~may~~ to adopt temporary rules concerning logo signs pursuant to G.S. 136-89.56. ~~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 Department 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.~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules.~~

~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection.~~

~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to adopting a temporary rule, the agency shall:

(1) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) Notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a3) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least

three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

SECTION 2. G.S. 150B-21.3(b2) reads as rewritten:

"(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more ~~persons~~ persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register."

SECTION 3. This act is effective when it becomes law.

House Judiciary I Committee

June 22, 2004

Minutes

The House Judiciary I Committee met on Tuesday, June 22, 2004 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, Fisher, Ross, Sexton, West, and Wood. A copy of the agenda and the Visitor Registration sheets are attached (Attachments I and II).

Chairman Hackney announced that at the request of the sponsor, House Bills 1522 and 1523 would not be discussed during the meeting.

Chairman Hackney told the Committee that Senator Hartsell was tied up in the Senate Appropriations Committee, and had requested that the Committee proceed in his absence with an explanation of Senate Bill 1167, AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, (Attachment III).

Ms. Erika Churchill, Staff Attorney, was recognized for an explanation of the bill. She distributed a proposed committee substitute, (Attachment IV). Chairman Hackney stated that the proposed committee substitute was comprised of the Senate bill with an added amendment that had been suggested regarding electronic notice for homeowners in homeowners' associations.

Representative Ross moved adoption of the proposed committee substitute for the purpose of discussion. The motion carried.

Ms. Churchill stated that the General Statutes Commission recommended Sections 1-4 of the bill. She said the recommendations were based on a 2003 North Carolina Supreme Court decision. She said that the intent of Sections 1 and 2 is to modify the Condominium Act, and that Sections 3 and 4 modify the Planned Community Act. Ms. Churchill said that each modification is attempting to clarify what applies to which condominium association and homeowners' association depending on when that association was created. She said that the effect of the legislation is to basically say that unless the declaration creating the homeowners' association expressly provides to the contrary, the General Statutes apply.

Ms. Churchill said that Sections 5 and 6 allow homeowners to elect to receive electronic email notice of the homeowners' association meeting instead of a written notice. A bill summary prepared by Ms. Churchill is attached, (Attachment V).

Ms. Michelle Frazier, North Carolina Bar Association, was recognized and spoke in support of the bill.

Mr. Bill Hale, representing CAI Homeowners' Associations, spoke in support of the bill.

Chairman Hackney reminded the Committee of its work during the previous Session to rewrite the Secret Peeping Law. He said that Representative Walend had called to his attention a situation that had arisen during the interim that identified a loophole in the legislation that was passed. Chairman Hackney said that Representative Walend had worked with Susan Sitze, Committee Counsel, to draft a technical correction to the Secret Peeping Law. An amendment was distributed to the members, (Attachment VI), and Ms. Sitze was recognized to explain the situation that had occurred and the subsequent amendment. She said that an employee of a pest control company had been observed in grocery stores peeping up women's skirts with his termite mirror. She said that the Secret Peeping Law did not cover this situation because the man was not using a camera to take a picture, and the women are not in a "room," but are in the middle of an open area. She said that the amendment would create a new subsection that would cover anyone secretly peeping underneath or through clothing using either mirrors or devices, and that the offense would be a Class 1 misdemeanor. She added that on a second or subsequent offense, the judge would have the option of requiring the offender to register as a sex offender.

Representative Ross expressed concern regarding the inclusion of the word "directly" on page 1, line 14 and suggested that it was too broad. She suggested a proposed amendment that would delete the words "either directly or" from line 14 on page 1. Upon vote of the Committee, the amendment was adopted. (It was decided to incorporate the amendment into the committee substitute without a written copy).

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

The meeting was adjourned at 10:45 a. m.

Joe Hackney

Representative Joe Hackney
Chairman

Emily Reynolds Freeman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

TUESDAY JUNE 22, 2004
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1522 – ADULT CARE HOMES CRIMINAL RECORDS CHECK/PILOT
REPRESENTATIVE WEISS

HOUSE BILL 1523 – CRIMINAL BACKGROUND CHECKS – LONG-TERM CARE
REPRESENTATIVE WEISS

SENATE BILL 1167 – CONDO AND PLANNED COMMUNITY CLARIFICATIONS
SENATOR HARTSELL

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

June 22, 2004 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd Lewis	General Statutes Commission
BILL HALE	JORDAN PRICE
HENRY JONES	"
Michelle Frazier	NC Bar Ass'n
P. Bay Hull	General Statutes Comm'n
John Phelps	NCLM
Jim Blackburn	NC Association of County Commissioners
DAVID BARNES	Poyner + Spruill LLP
Luke Conroy	Gov. office
Jon Delk	Gov Off
John Holton	intern

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1167*

Short Title: Condo and Planned Comm. Clarifications. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107.1 (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, ~~1986;~~ ~~but those~~ 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47C-3-102(a) reads as rewritten:

"(a) ~~Subject to the provisions of the declaration,~~ Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) Hire and terminate managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
(5) Make contracts and incur liabilities;
(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
(7) Cause additional improvements to be made as a part of the common elements;
(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
(9) Grant easements, leases, licenses, and concessions through or over the common elements;
(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars ($150.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;
(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;
(13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
(15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
(16) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 3. G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, ~~1999.~~ 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate

existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 4. G.S. 47F-3-102 reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

~~Subject to the provisions of the articles of incorporation or the declaration and the declarant's rights therein,~~Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;

(11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;

(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;

(15) Assign its right to future income, including the right to receive common expense assessments;
(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
(17) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1167*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1167-CSST-94 [v.1]

6/21/2004 7:47:36 PM

Short Title: Condo and Planned Comm. Clarifications. (Public)

Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO PERMIT ELECTRONIC NOTICES OF OWNERS' ASSOCIATION MEETINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C 3 102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107.1 (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, ~~1986; but those~~ 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47C-3-102(a) reads as rewritten:

"(a) ~~Subject to the provisions of the declaration,~~ Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
(3) Hire and terminate managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
(5) Make contracts and incur liabilities;
(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
(7) Cause additional improvements to be made as a part of the common elements;
(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
(9) Grant easements, leases, licenses, and concessions through or over the common elements;
(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars ($150.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;
(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;
(13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
(15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
(16) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 3. G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F 3 102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this State before January 1, ~~1999.~~ 1999, unless the articles of incorporation or the

declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 4. G.S. 47F-3-102 reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

~~Subject to the provisions of the articles of incorporation or the declaration and the declarant's rights therein,~~Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;

(11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;

(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
(15) Assign its right to future income, including the right to receive common expense assessments;
(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
(17) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 5. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit ~~owner.~~owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer."

SECTION 6. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot ~~owner.~~owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

SECTION 7. This act is effective when it becomes law.

"if the organizational documents are amended to grant the power" if the planned community was pre-existing. However, applied to homeowners' associations created after the effective date of the Planned Community Act, the Court continued, "subject to" means "unless the organizational documents prohibit or limit the power."

The Court's opinion appears to be contrary to the drafters' intent. The phrase "subject to" was intended to mean "unless the organizational documents prohibit or limit the power" when applied to both pre- and post-existing planned communities, according to the Official Comment to the equivalent section of the Uniform Planned Community Act, on which G.S. 47F-3-102 is based. The Uniform Act's Official Comment is not printed in the General Statutes and was not brought to the Court's attention before it issued its opinion in Wise and the enacting session law's applicability language was not codified with the original legislation.

The matter was brought to the General Statutes Commission's attention by the original members of the committee that drafted the Planned Community Act. They noted that Wise may also affect the Condominium Act (Chapter 47C of the General Statutes), which has similar language and was also a model for the Planned Community Act.

Specific Comments

Sections 1 and 3. These sections amend the applicability sections of the Condominium Act and the Planned Community Act, respectively G.S. 47C-1-102 and G.S. 47F-1-102, to specify that the portions applicable to pre-existing condominiums or planned communities apply unless the organizational documents expressly provide to the contrary.

Sections 2 and 4. These sections amend the statutes listing powers of condominium and homeowners' associations (respectively G.S. 47C-3-102 and G.S. 47F-3-102) to change the current "subject to" language to "unless [the organizational documents] expressly provide to the contrary."

Section 5. This section makes the bill effective when it becomes law.

SENATE BILL 1167:
Condo and Planned Comm. Clarifications.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Hartsell
Date:	June 21, 2004	**Summary by:**	R. Erika Churchill*
Version:	S1167-CSST-94		Committee Counsel

SUMMARY: ***The proposed committee substitute would amend Chapter 47C, the North Carolina Condominium Act (Condominium Act), and Chapter 47F, the North Carolina Planned Community Act (Planned Community Act) of the General Statutes to make those Acts applicable to all condominium and homeowners associations regardless of when the associations were created and unless organizational documents of the associations provide otherwise, and would allow homeowners associations to give notice by electronic mail at the request of the owner.***

CURRENT LAW & BILL ANALYSIS: Under current law the Acts give condominium and homeowners associations various listed powers. Many of the listed powers apply to associations that predate the Acts.

The proposed committee substitute would amend the Condominium Act the Planned Community Act to clarify that specified listed of powers in each act:

(1) Apply in the same manner to all condominiums or planned communities, regardless of the time they were created. AND

(2) Apply unless the organizational documents for the condominium or planned community expressly provide to the contrary.

Sections 1 and 3. These sections would amend the applicability sections of the Condominium Act and the Planned Community Act, respectively G.S. 47C-1-102 and G.S. 47F-1-102, to specify that the portions applicable to pre-existing condominiums or planned communities apply unless the organizational documents expressly provide to the contrary.

Sections 2 and 4. These sections would amend the statutes listing powers of condominium and homeowners' associations (respectively G.S. 47C-3-102 and G.S. 47F-3-102) to change the current "subject to" language to "unless [the organizational documents] expressly provide to the contrary."

Sections 5 and 6. These sections would allow owners to elect to receive notices of homeowners association meeting via e-mail.

Section 7. The bill would be effective when it becomes law.

BACKGROUND: See attached memorandum provided by the General Statutes Commission.

*Sandra Alley contributed to this summary.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary II Committee

FROM: General Statutes Commission

DATE: June 6, 2004

RE: Senate Bill 1167 (Condo and Planned Comm. Clarifications)

General Comments

This bill makes essentially the same amendments to the North Carolina Condominium Act (Condominium Act) and the North Carolina Planned Community Act (Planned Community Act) (respectively Chapter 47C and Chapter 47F of the General Statutes). Among other things, these Acts give condominium and homeowners associations various listed powers, many of which apply to condominiums and planned communities that predate the Acts. This bill amends these Acts to specify that the statute in each Act that contains the list of powers:

(1) applies in the same manner to all condominiums or planned communities, regardless of the time they were created, and

(2) applies unless the organizational documents for the condominium or planned community expressly provide to the contrary.

The General Assembly enacted the Planned Community Act in 1998 (in SL 1998-199). The enacting session law explicitly provides that portions of the Act, including G.S. 47F-3-102(12) (Powers of owners' associations to impose reasonable fines for violations of the declarations, bylaws, or rules and regulations of the association), apply to pre-existing planned communities. In 2003, the North Carolina Supreme Court considered the application of subdivision (12) to a pre-existing planned community in Wise v. Harrington Grove Homeowners Association, 357 N.C. 396, ___ S.E.2d ___ (2003). The Court construed the introductory language of G.S. 47F-3-102, that a homeowners' association has the powers listed in that statute "[s]ubject to the provisions of the articles of incorporation or the declaration . . . ", as meaning

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1167*

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

S1167-ASA-37 [v.1]

Date _____,2004

Comm. Sub. [YES]
Amends Title [YES]
S1167-CSST-93

representative _____

moves to amend the bill on page
moves to amend the bill on page 1, lines 5-6 by rewriting the line to read:
"COMMISSION, TO PERMIT ELECTRONIC NOTICES OF OWNERS' ASSOCIATION MEETINGS, TO AMEND THE SECRET PEEPING STATUTE AND TO MAKE CONFORMING CHANGES."

And on page 4, lines 36-37 by inserting between the lines the following:

"**SECTION 7.** G.S. 14-202 reads as rewritten:

'**§ 14-202. Secretly peeping into room occupied by another person.**

(a) Any person who shall peep secretly into any room occupied by another person shall be guilty of a Class 1 misdemeanor.

(a1) Unless covered by another provision of law providing greater punishment, any person who secretly or surreptitiously peeps underneath or through the clothing being worn by another person, either directly or through the use of mirrors or other devices, 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 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 rest room, 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 H 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, 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)~~(a), (a1), 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) The provisions of subsections (a), (a1), (c), (e), (g), (h), and (k) of this section do 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.

(n) This section does not affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section.'

SECTION 8. 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 a violation of ~~G.S. 14-202(a)~~G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.'"

And on page 4, line 37 by rewriting the line to read:

"**SECTION 9.** Sections 7 and 8 of this act become effective December 1, 2004 and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2003 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
S.B. 1167 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 1167*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1167-PCS85360-ST-94

Short Title: Condo and Planned Comm. Clarifications. (Public)

Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO PERMIT ELECTRONIC NOTICES OF OWNERS' ASSOCIATION MEETINGS, TO AMEND THE SECRET PEEPING STATUTE, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102(a) reads as rewritten:

"(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C 3 102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107.1 (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, ~~1986; but those~~ 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums."

SECTION 2. G.S. 47C-3-102(a) reads as rewritten:

"(a) ~~Subject to the provisions of the declaration,~~ Unless the declaration expressly provides to the contrary, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;
(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
(3) Hire and terminate managing agents and other employees, agents, and independent contractors;
(4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
(5) Make contracts and incur liabilities;
(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
(7) Cause additional improvements to be made as a part of the common elements;
(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
(9) Grant easements, leases, licenses, and concessions through or over the common elements;
(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to unit owners;
(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred fifty dollars ($150.00) (G.S. 47C-3-107.1) for violations of the declaration, bylaws, and rules and regulations of the association;
(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;
(13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
(15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and
(16) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 3. G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F 3 102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-115 (Assessments for common expenses), and G.S. 47F-3-116 (Lien for assessments), apply to all planned communities created in this

State before January 1, ~~1999.~~ 1999, unless the articles of incorporation or the declaration expressly provides to the contrary. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 4. G.S. 47F-3-102 reads as rewritten:

"**§ 47F-3-102. Powers of owners' association.**

~~Subject to the provisions of the articles of incorporation or the declaration and the declarant's rights therein,~~Unless the articles of incorporation or the declaration expressly provides to the contrary, the association may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;

(11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
(15) Assign its right to future income, including the right to receive common expense assessments;
(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
(17) Exercise any other powers necessary and proper for the governance and operation of the association."

SECTION 5. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit ~~owner.~~owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer."

SECTION 6. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot ~~owner.~~owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer."

SECTION 7. G.S. 14-202 reads as rewritten:

"**§ 14-202. Secretly peeping into room occupied by another person.**

(a) Any person who shall peep secretly into any room occupied by another person shall be guilty of a Class 1 misdemeanor.

(a1) Unless covered by another provision of law providing greater punishment, any person who secretly or surreptitiously peeps underneath or through the clothing being worn by another person, through the use of a mirror or other device, 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 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 rest room, 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 H 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, 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)~~(a), (a1), 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) The provisions of subsections (a), (a1), (c), (e), (g), (h), and (k) of this section do 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.

(n) This section does not affect the legal activities of those who are licensed pursuant to Chapter 74C, Private Protective Services, or Chapter 74D, Alarm Systems, of the General Statutes, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section."

SECTION 8. 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 a violation of ~~G.S. 14-202(a)~~G.S. 14-202(a), (a1), 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 9. Sections 7 and 8 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

House Judiciary I Committee

June 29, 2004

Minutes

The House Judiciary 1 Committee met on Tuesday, June 29, 2004. The Chairman, Representative Hackney, called the meeting to order at 10:15 a.m. Rep. Hackney and the following members were present: Representatives Ross, Alexander, Capps, Fisher, Insko, Sexton, and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Representative Thomas Wright, sponsor of House Bill 1766, AN ACT TO ESTABLISH LOCAL COMMISSIONS FOR CERTAIN JUDICIAL DISTRICTS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THIS ACT, (Attachment III), was recognized. Representative Wright stated that the bill needed additional work and requested that it be heard at a later meeting. Representative Ross suggested that members from the Innocence Commission be consulted about it. Rep. Hackney said that the bill would be pulled back and be heard at a later meeting after additional work on it has been completed.

In the absence of the bill sponsor, Senator Clodfelter, Rep. Hackney introduced Senate Bill 916, AN ACT TO ESTABLISH CIVIL NO-CONTRACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT, (Attachment IV). A Proposed Committee Substitute was offered and adopted for the purpose of discussion, (Attachment V). Rep. Hackney recognized Erika Churchill, Committee Counsel, to explain the history and a line-by-line explanation of the bill. The bill addresses the workplace and instances whereby an employee suffers unlawful conduct that results in bodily injury, harassment, or threats. The bill does not allow for recovery of any monetary damages.

Mr. Will Polk, Director of Victims Assistance Services, State Attorney General's Office, was recognized and spoke in support of the bill. He stated that the bill will assist in preventing workplace incidents from unlawful conduct, will allow law enforcement to respond quickly, and provides additional tools to stop dangerous violence before it occurs. He urged support for the bill.

Rep. Hackney asked Ms. Churchill to give a line-by-line explanation of the bill. The Committee members commented on and expressed concern on numerous items in the bill.

Rep. Hackney noted that the bill did not address a definition for an employee. He also called attention to the wording "the court may" which would mean that the court could determine that the unlawful conduct committed did not rise to the level that would require an order, and called attention to the fact that Section 95-264(b)(5) does not include e-mail.

Rep. Ross expressed concerns that the bill covered protection only in the workplace, that the steps provided under the bill could cause anger of the person and cause problems away from the workplace.

Rep. Capps referred to Section 95-267(b)(3) and questioned why the "one-year" limit. Mr. Polk said it was based on policy, and could be renewed or extended by the judge.

The number of concerns and questions raised about the bill were such that the members thought it best that the bill be held for further study. Rep. Capps moved to remove the bill from today's calendar and that it be re-calendared.

Judge Jack Cozart was recognized and expressed concern that with the session expected to close shortly that there possibly would not be enough time to complete the process for passage of the bill during this session. Rep. Hackney indicated that he did not believe this would be a problem, and removed the bill to allow for appropriate measures to be taken.

The meeting was adjourned.

Rep. Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
TUESDAY JUNE 29, 2004
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1766 – STATEWIDE CRIMINAL JUSTICE TRUTH COMMISSION
REPRESENTATIVE WRIGHT

SENATE BILL 916 – PREVENT PERSONAL AND WORKPLACE VIOLENCE
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — June 29, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hutaff	N.C.S.D.A.
Richard Westbrook	UTU
Glenn Lamm	U.T.U
BOBBY RIDDLE	PFFPNC
Richard O'Brien	PFFPNC
Mike Okun	NC State AFL-CIO
James Andrews	NC State AFL-CIO
Rich Webb	NCGA Intern
Lou Rubert	CYPC
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off Assn
Peter A. Young	ACLU

VISITOR REGISTRATION SHEET

House Judiciary I — June 29, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Gurganus	NC Bar Assoc.
Will Polk	NCDOJ
Jo McCants	AOC
Bob Christy	Clerk's of Court
Jack Cozart	Parker Poe
Tracy Kimbrell	Parker Poe
Joe Polk	Gov Office
John Molton	intern
Katie Jacklen	intern
John Madler	NC Sentencing Commission
Tamara Flinchum	NC Sentencing Commission

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1766

Short Title:	Statewide Crim. Justice Truth Commission.	(Public)
Sponsors:	Representatives Wright; and Luebke.	
Referred to:	Judiciary I.	

May 31, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATEWIDE CRIMINAL JUSTICE TRUTH COMMISSION, TO ESTABLISH LOCAL COMMISSIONS FOR CERTAIN JUDICIAL DISTRICTS, AND TO APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new article to read:

"Article 9A.

"North Carolina Criminal Justice Truth Commission.

"**§ 7A-69.5. North Carolina Criminal Justice Truth Commission.**

(a) There is established the North Carolina Criminal Justice Truth Commission. The Commission shall consist of eight members as follows: one superior court judge and one district court judge, each appointed by the Chief Justice of the Supreme Court; one district attorney and one public defender or defense attorney, each appointed by the Governor; four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, two appointed by the Speaker of the House of Representatives and two appointed by the President Pro Tempore of the Senate. The superior court judge shall act as Chair of the Commission and shall set the time and place of the meetings.

(b) Terms of Commission members shall be for six years, except that, to achieve overlapping of terms, one of the judges, the public defender, one of the practicing members of the State Bar appointed by the Speaker of the House of Representatives, and one of the members of the State Bar appointed by the President Pro Tempore of the Senate shall be appointed initially for a term of only three years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for appointment, then he or she ceases to be a member. Vacancies are filled in the same manner as the original appointment for the remainder of the term. Members are entitled to per diem and all members are entitled to

reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

"**§ 7A-69.6. Powers and duties.**

(a) The duty of the Commission shall be to receive claims of prosecutorial misconduct, to investigate every credible claim of prosecutorial misconduct, and to take appropriate legal actions to remedy those claims that are meritorious.

(b) The Commission shall have the following powers:

(1) To receive complaints alleging prosecutorial misconduct.

(2) To investigate any alleged prosecutorial misconduct coming to its attention and to determine whether probable cause exists that prosecutorial misconduct has occurred.

(3) To subpoena witnesses and compel their attendance and to compel the production of books, papers, and other documents deemed necessary or material to the investigation.

(4) If the Commission determines that a reasonable belief exists that prosecutorial misconduct did occur, to appoint an attorney for the purpose of filing a motion for appropriate relief in the defendant's behalf.

"**§ 7A-69.7. Procedures.**

Any citizen of the State may file a written complaint with the Commission concerning an incident of alleged prosecutorial misconduct and thereupon the Commission shall make such investigation, as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, to punish for contempt, and to prescribe its own rules of procedure. Testimony and other evidence presented to the Commission are privileged in any action for defamation. A majority of the members of the Commission must concur in any finding of prosecutorial misconduct and the direction to file a motion for appropriate relief on behalf of the defendant.

"**§ 7A-69.8. Commission counsel and executive secretary.**

The Commission may appoint a counsel to serve at the pleasure of the Commission. The counsel must be a member of the North Carolina State Bar, but shall not be permitted to engage in the private practice of law. The Commission may also hire an executive secretary. The executive secretary shall serve at the pleasure of the Commission.

"**§ 7A-69.9. Organization of judicial district criminal justice truth commissions.**

(a) Individual judicial districts may also establish local criminal justice truth commissions as provided by this section. Any judicial district which has more than 100 licensed attorneys as determined by the North Carolina State Bar's records may establish a judicial district criminal justice truth commission as provided by this section. A judicial district with fewer than 100 licensed attorneys may establish a district criminal justice truth commission with consent of the North Carolina Criminal Justice Truth Commission. One or more judicial districts, including those with fewer than 100 licensed attorneys, may also establish a multidistrict criminal justice truth commission

as provided by this section. The multidistrict commissions shall be subject to all of the provisions set out in this section and all references to district commissions in this section shall also apply to multidistrict commissions.

(b) Creation of District Criminal Justice Truth Commissions. – A judicial district may establish a district commission at a duly called meeting of the judicial district bar, at which a quorum is present, upon the affirmative vote of a majority of the active members present. Within 30 days of the election, the president of the judicial district bar shall certify in writing the establishment of the district commission to the executive secretary of the North Carolina Criminal Justice Truth Commission. A multidistrict commission may be established by affirmative vote of a majority of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar, at which a quorum is present. Within 30 days of the election, the chairperson of the multidistrict commission shall certify in writing the establishment of the district commission to the executive secretary of the North Carolina Criminal Justice Truth Commission. The active members of each participating judicial district may adopt a set of bylaws not inconsistent with these rules by majority vote of the active members of each participating judicial district present at a duly called meeting of each participating judicial district bar at which a quorum is present. The chairperson of the multidistrict commission shall promptly provide a copy of the bylaws to the executive secretary of the North Carolina Criminal Justice Truth Commission.

(c) Appointment of District Commission Members. – Each district commission shall be composed of members who are active members in good standing both of the judicial district bar to which they belong and of the North Carolina State Bar and shall have a membership of at least 10 members. The membership of each district commission shall also have a representative from each of the following: the district attorney's office, the defense bar, a public defender or an attorney from the indigent appointment list for felony cases. Initially, the North Carolina Criminal Justice Truth Commission shall appoint seven members to the local commission based on recommendations received from the president of the local bar. In addition to the attorney members, each district commission may also include one to three public members who have never been licensed to practice law in any jurisdiction to be appointed by the president of the local bar. Public members shall not perform investigative functions regarding allegations of prosecutorial misconduct but in all other respects shall have the same authority as the attorney members of the district commission. The chairperson of the district commission shall be selected by the president of the judicial district and shall serve at his or her pleasure. Alternatively, the chair may be selected and removed as provided in the district bar bylaws. The attorney and public members of the district commission shall be selected by and serve at the pleasure of the president of the judicial district bar and the chair of the district commission. Alternatively, the district commission members may be selected and removed as provided in the district bar bylaws.

The members of the district commission, including the chair, shall be appointed for staggered three-year terms, except that the president and chair shall appoint some of the initial committee members to terms of less than three years, to effectuate the staggered

terms. No member shall serve more than one term, without first having rotated off the committee for a period of at least one year between three-year terms. Any member who resigns or otherwise becomes ineligible to continue serving as a member shall be replaced by appointment by the president of the judicial district bar and the chair of the commission or as provided in the district bar bylaws as soon as practicable.

"**§ 7A-69.10. Duty and powers of the judicial district commissions.**

(a) A judicial district criminal justice truth commission may investigate allegations of prosecutorial misconduct filed against prosecutors who live or practice within the judicial district. The commission may also investigate any allegations referred to it for investigation by the North Carolina Criminal Justice Truth Commission. A complaint may be filed with the judicial commission by any person against a prosecutor in the judicial district who is alleged to have committed an act of prosecutorial misconduct.

(b) The commission may interview the complainant, the prosecutor against whom the complaint is filed, and any other person who may have relevant information regarding the allegation of misconduct.

(c) Upon completion of the investigation, the Commission shall file a written report with the North Carolina Criminal Justice Commission. The report shall include the Commission's findings of fact and recommendation as to whether the North Carolina Criminal Justice Commission shall find probable cause of prosecutorial misconduct and whether a motion for appropriate relief should be filed on behalf of the defendant."

SECTION 2. There is appropriated from the General Fund to the North Carolina Criminal Justice Truth Commission the sum of two hundred fifty thousand dollars ($250,000) for the 2004-2005 fiscal year to implement this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 3

SENATE BILL 916*
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03

Short Title: Prevent Personal and Workplace Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 50C.**

"**Civil No-Contact Orders.**

"**§ 50C-1. Short title.**

This Chapter may be cited as the 'Civil No-Contact Order Act'.

"**§ 50C-2. Definitions.**

The following definitions apply in this Chapter:

(1) Abuse. – Any physical or mental maltreatment, harassment, intimidation, or interference with the personal liberty of another.

(2) Civil no-contact order. – A temporary or permanent order granted under this Chapter, which includes a remedy authorized by G.S. 50C-9.

(3) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

(4) Nonconsensual. – A lack of freely given consent.

(5) Sexual conduct. – Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. For purposes of this subdivision, the term shall include the transfer or transmission of semen.

(6) Sexual penetration. – Any contact, however slight, between the sexual organ or anus of one person by an object, the sexual organ, mouth, or anus of another person or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sexual organ or anus of another person, including acts of cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(7) Stalking. – Following on more than one occasion or otherwise harassing, as defined in G.S. 14-277.3(c), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

(7) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon a person but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.

c. Stalking.

d. Willfully threatening, orally, in writing, or by any other means, to physically injure the victim in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the victim to believe that the threat will be carried out.

(8) Victim. – A person against whom an act of unlawful conduct has been committed.

"**§ 50C-3. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed in civil district court by any of the following:

(1) A person who is a victim of unlawful conduct.

(2) A person on behalf of a minor child or an incompetent adult, who is a victim of unlawful conduct who cannot file the petition on his or her own behalf.

(3) An employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Chapter in order to

determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Chapter shall not face disciplinary action based on their level of participation or cooperation.

"**§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil district court.

(b) The court shall charge no fees for filing or certifying petitions for civil no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this section.

(c) The court shall provide, through the office of the clerk of the court, simplified forms and clerical assistance to any person not represented by counsel or in need of help with the writing or filing of a petition under this section.

"**§ 50C-5. Pleadings; nondisclosure of address.**

(a) A petition for a civil no-contact order shall be in writing and verified, or accompanied by an affidavit, and shall allege either of the following:

(1) That the petitioner or the person on whose behalf the petition is brought is or has been the victim of unlawful conduct by the respondent.

(2) That the employee has suffered unlawful conduct from the respondent that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace.

(b) If, in the petition, the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further abuse, the victim's address may be omitted from all documents filed with the court. If the victim has not disclosed an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

"**§ 50C-6. Venue.**

A petition for a civil no-contact order may be filed in any of the following counties:

(1) Where the petitioner resides.

(2) Where the respondent resides.

(3) Where the unlawful conduct took place.

(4) Where the place of employment is located.

"**§ 50C-7. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Chapter shall require the respondent to answer or appear in court within 10 days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any emergency civil no-contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

(c) Service of process on a member of the respondent's household or by publication shall be adequate if the following apply:

(1) The petitioner has made all reasonable efforts to accomplish actual service of process personally upon the respondent, but the respondent cannot be found to effect the service.

(2) The petitioner files an affidavit or presents sworn testimony as to those efforts.

(d) The court may enter a civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**§ 50C-8. Hearsay exception.**

(a) In proceedings for a civil no-contact order or prosecutions for violating a civil no-contact order, the prior sexual activity or the reputation of the victim is inadmissible except under the following circumstances:

(1) As evidence concerning the past sexual conduct of the victim with the respondent when this evidence is offered by the respondent regarding the issue of whether the victim consented to the sexual conduct as related to the offense being alleged.

(2) When constitutionally required to be admitted.

(b) No evidence admissible under this section may be introduced unless ruled admissible by the trial judge after an offer of proof has been made at a hearing held in camera. At this hearing, the court shall determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the victim and the respondent. Unless the court finds that reasonably specific information as to date, time, or place or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the victim and the respondent. The court shall not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence is admissible at trial to the extent the court specifies the evidence that may be admitted and the areas in which the victim may be examined or cross-examined.

"**§ 50C-9. Civil no-contact order; remedy.**

(a) If the court finds that the petitioner has proven that the petitioner, the person on whose behalf the petition was brought, or employee is a victim of unlawful conduct a civil no-contact order shall issue. However, the petitioner must satisfy the requirements of G.S. 50C-10 for emergency orders or G.S. 50C-11 for permanent orders. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury on the person of the victim.

(b) The court may include any one or more of the following orders in its temporary or permanent orders under this Chapter:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim, the employer or the employer's operations, or the employer's employee at the employer's workplace.
(2) Order the respondent to cease stalking the victim, including at the victim's workplace.
(3) Order the respondent to cease harassment of the victim or employer.
(4) Order the respondent not to abuse or injure the victim or the employer, including the employer's property.
(5) Order the respondent not to telephone the victim or the employer.
(6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present, if reasonable.
(7) Order other relief deemed necessary and appropriate by the court.

(c) Denial of a remedy shall not be based, in whole or in part, on evidence that:
(1) The respondent had cause for use of force, unless the use of force was justified as determined by the court.
(2) The respondent was voluntarily intoxicated.
(3) The victim acted or failed to act in self-defense or defense of another.
(4) The victim left or failed to leave the residence or household to avoid further unlawful conduct by the respondent.

(d) Monetary damages are not recoverable as a remedy under this Chapter.

"**§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

(a) A court may issue a temporary civil no-contact order if the petitioner satisfies the following requirements:
(1) The petitioner has met the requirements of G.S. 50C-9.
(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 50C-11 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day temporary order before any available judge or magistrate who may grant relief under this Chapter. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner or victim and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue orally, by telephone, by

facsimile, or otherwise an emergency civil no-contact order at all times, whether or not the court is in session.

"**§ 50C-11. Permanent civil no-contact order.**

A permanent civil no-contact order shall issue if the petitioner has served notice of the hearing for the permanent civil no-contact order on the respondent in accordance with G.S. 50C-7 and satisfied the following requirements:

(1) The petitioner has met the requirements of G.S. 50C-9.

(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 50C-7.

(3) The respondent has answered or is in default.

"**§ 50C-12. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time, not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the petitioner filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 50C-10(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**§ 50C-13. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person

protected by the order. The order shall further state that any person named in the order is protected by this Chapter.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**§ 50C-14. Notice of orders.**

(a) The clerk of court shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff or other law enforcement personnel charged with maintaining criminal records or serving the order upon the respondent.

(b) Unless the respondent was present in court when the order was issued, the sheriff, other law enforcement personnel, or special process server shall promptly serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be promptly recorded, issued, and served in accordance with the provisions of this Chapter.

"**§ 50C-15. Violation.**

A knowing violation of a civil no-contact order shall be punished as contempt of court.

"**§ 50C-16. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(b) Any law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(c) The law enforcement officer may verify the existence of a civil no-contact order by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**§ 50C-17. Limits on liability of employers.**

(a) An employer and an employer's agents who act in accordance with this Chapter shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, are immune from civil liability for actions taken under this Chapter.

(b) The failure of any employer, or its employee or invitee, to utilize the procedures of this Chapter shall not be negligence, and evidence of the failure to utilize the procedures of this Chapter shall not be admissible as evidence of negligence.

"**§ 50C-18. Scope of Chapter; other remedies available.**

This Chapter does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Chapter does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Chapter does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Chapter is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. This act becomes effective December 1, 2003, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

6/29/04

ATTACHMENT V

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 916*
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S916-CSST-99 [v.3]

6/28/2004 8:08:56 PM

Short Title: Prevent Workplace Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 23.

"Workplace Violence Prevention.

"**§ 95-260. Definitions.**

The following definitions apply in this Article:

(1) Civil no-contact order. – An order granted under this Article, which includes a remedy authorized by G.S. 95-264.

(2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

(3) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under

circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

"**95-261. Civil no-contact orders; persons protected.**

A petition for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation.

"**95-262. Commencement of action; venue.**

(a) An action for a civil no-contact order is commenced by filing a petition for a civil no-contact order in any civil district court.

(b) A petition for a civil no-contact order may be filed in the county where the unlawful conduct took place.

"**95-263. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Article shall require the respondent to answer or appear in court within 10 days. Attachments to the summons or notice shall include the petition for the civil no-contact order and supporting affidavits, if any, or any temporary civil no-contact order that has been issued.

(b) Service of the summons and attachments shall be by the Sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the Sheriff by personal delivery, the respondent may be served by publication in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a civil no-contact order by default for the remedy sought in the petition, if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**95-264. Civil no-contact order; remedy.**

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.

(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.
(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
(5) Order the respondent not to telephone the employer or the employer's employee at the employer's workplace.
(6) Order other relief deemed necessary and appropriate by the court.

(c) Monetary damages are not recoverable as a remedy under this Article.

"**95-265. Temporary civil no-contact order; court holidays and evenings.**

(a) A court may issue a temporary civil no-contact order if the petitioner satisfies the following requirements:
(1) The petitioner has met the requirements of G.S. 95-263.
(2) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the petitioner's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 95-266 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the petitioner may file a petition for a 21-day temporary order before any available judge or magistrate who may grant relief under this Article. If the judge or magistrate finds that there is an immediate and present danger of abuse against the petitioner or victim and that the petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order.

(d) The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to authorize orally, by telephone, by facsimile, or otherwise an emergency civil no-contact order, whether or not the court is in session. Any emergency civil no-contact order authorized under this subsection shall be reduced to writing and signed by the person designated by the chief district court judge to be reasonably available for such purpose.

"**95-266. Permanent civil no-contact order.**

A permanent civil no-contact order shall issue if the petitioner satisfied the following requirements:
(1) The petitioner has met the requirements of G.S. 95-263.
(2) A general appearance was made or filed by or for the respondent or process was served on the respondent in the manner required by G.S. 95-263.

(3) The respondent has answered or is in default.

"**95-267. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not less than 14 days or greater than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time, not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the petitioner filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended if the petitioner's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 95-265(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**95-268. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Article.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**95-269. Notice of orders.**

(a) The clerk of court shall, or the petitioner may, on the same day that a civil no-contact order is issued, file a certified copy of that order with the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be recorded, issued, and served in accordance with the provisions of this Article.

"**95-270. Violation of valid order.**

A violation of an order entered pursuant to this Article is punishable as contempt of court.

"**95-271. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Article may be enforced by all North Carolina law enforcement agencies with subject matter and territorial jurisdiction without further order of the court.

(b) Any law enforcement officer with subject matter and territorial jurisdiction may make an arrest without a warrant if the officer has probable cause to believe that a person has committed or is committing a violation of a civil no-contact order.

(c) The law enforcement officer may verify the existence of a civil no-contact order by telephone, radio, or other electronic communication with a law enforcement agency or by referring to the copy of the order provided by the petitioner or the respondent.

"**95-272. Limits on liability of employers.**

(a) An employer and an employer's agents who act in accordance with this Article shall be presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, are immune from civil liability for actions taken under this Article.

(b) The failure of any employer, or its employee or invitee, to utilize the procedures of this Article shall not be negligence, and evidence of the failure to utilize the procedures of this Article shall not be admissible as evidence of negligence.

"**95-273. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the

right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. This act becomes effective December 1, 2004, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

SENATE BILL 916:
Prevent Workplace Violence.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	June 29, 2004	**Summary by:**	R. Erika Churchill
Version:	S916-CSST-99 v3		Committee Counsel

SUMMARY: ***The proposed committee substitute sets up a process by which an employer can get a temporary restraining order and an injunction on behalf of an employee who has suffered unlawful conduct at the workplace.***

BILL ANALYSIS: The proposed committee substitute creates a new Article 23 of Chapter 95, that would allow a

G.S. 95-260 would define unlawful conduct to include infliction of bodily injury, harassment, or threats.

G.S. 95-261 sets out a procedure whereby an employer may seek an injunction to prevent the prohibited conduct. The employer files a petition on behalf of an employee who has suffered unlawful conduct that can be reasonably construed to be carried out, or was carried out at the employee's workplace. The employee is to be consulted prior to the filing of the petition, and cannot face disciplinary action based on their level of participation or cooperation.

G.S. 95-262 provides that a petition is commenced by the filing of the petition in civil district court in the county where the unlawful conduct took place.

G.S. 95-263 provides for service of process with respect to the civil no-contact petition and order.

G.S. 95-264 sets forth the available remedies as follows:

- Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.
- Order the respondent to cease stalking the employer's employee at the employer's workplace.
- Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
- Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
- Order the respondent not to telephone the employer or the employer's employee at the employer's workplace.
- Order other relief deemed necessary and appropriate by the court.
- Monetary damages are not recoverable.

G.S. 95-265 authorizes the courts to enter temporary civil no-contact orders not to exceed 21 days duration.

G.S. 95-266 requires the courts to enter a permanent civil no-contact order, not to exceed one year in duration if the petitioner has meet the service of process requirements and the respondent has appeared to respond to the allegations, or failed to answer.

G.S. 95-267 provides that temporary orders are to be for at least 14 days and no more than 21 days, and permanent orders are for a fixed period of time not to exceed one year. The order may be extended upon motion of the petitioner.

G.S. 95-268 sets forth the required contents of the order to be served upon the respondent.

G.S. 95-269 requires the clerk of court to file a certified copy of the order with the sheriff on the day the order is entered. The sheriff is required to serve a copy of the order on the respondent unless the respondent was present in court when the order was entered.

G.S. 95-270 provides that a violation of the order is punishable by contempt of court.

G.S. 95-271 authorizes a law enforcement officer with subject matter and territorial jurisdiction to enforce the order.

G.S. 95-272 provides that any employer who acts in accordance with the Article is presumed to be acting in good faith, and will be immune from civil liability for actions taken under the Article. However, it is not negligence if the employer fails to act under the Article.

G.S. 95-273 clarifies that the Article is addition to other remedies available, and does not preclude those possible remedies.

EFFECTIVE DATE: The act would become effective December 1, 2004, and applies to actions the give rise to civil no-contact orders on or after that date.

House Judiciary I Committee

July 1, 2004

Minutes

The House Judiciary 1 Committee met on Thursday, July 1, 2004. The Chairman, Representative Hackney, called the meeting to order at 10:00 a.m. The following members were present: Representatives Alexander, Capps, Fisher, Insko, Ross, Sexton, West and Wood. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney announced that a new proposed committee substitute had been drafted for Senate Bill 916, AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT. A proposed House committee substitute was adopted for discussion during the June 29, 2004 meeting of the Committee. During that meeting, a number of concerns and questions were raised regarding the bill and it was decided to hold the bill over for further study.

The new proposed committee substitute, (version 7) was distributed, (Attachment III). Representative Sexton moved its adoption for the purpose of discussion. The motion carried.

Chairman Hackney announced that a vote would not be taken on the committee substitute during the meeting. He said that the Senate Judiciary I Committee was currently considering the House version of the bill, which he had introduced and was passed out of the House Judiciary I Committee during the long session. He said that the House bill had been discussed earlier in the day,, but no action was taken, and that he and Senator Clodfelter wanted to make sure that the procedures are congruent.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the changes in the new proposed committee substitute. She said that a provision on page 3, lines 8-9 would now provide that a judge's order for no-contact can now include an order of the respondent not to contact by telephone, written communication or electronic means the employee or the employer at the workplace. Ms. Churchill stated that another change in the bill as it was presented at the previous meeting regarded the section that limited the liability of the employer. She said that this section has been removed in the new proposed committee substitute. The section has been replaced with new language on page 5, lines 12-22. She said that the language is identical to language that is contained in House Bill 1354 which is the Strengthen Domestic Violence Law, and basically says that the employer cannot discharge, demote or deny promotion or other benefit of employment to any employee for taking reasonable time off to obtain a Chapter 50B protective order.

Chairman Hackney noted that it had been pointed out that a change was made on page 3, line 14, and asked Ms. Churchill to comment on the change. She said that the bill, as presented during the previous meeting, said that the court could issue a temporary civil no-contact order if the petitioner had met the requirements of the new G.S. 95-263, which is personal service and notice to the respondent, and if there was good cause to grant the remedy regardless of prior service of the respondent. She said that both requirements cannot be met in the situation where there is no service. Ms. Churchill said that she and Walker Reagan, who is working with Senator Clodfelter on the House version, had attempted to draft language that would cover both situations where there had been service or had not been service, that would still allow the issuance of an ex parte order, assuming that is what was meant. She said it was a policy decision of whether one wanted to issue an ex parte order without notice to the respondent.

Chairman Hackney summarized the changes in the proposed committee substitute by saying that the court may issue, without service of process or notice if the court finds from specific facts shown that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if respondent were given any prior notice or greater notice than was actually given of the complainant's efforts to obtain judicial relief. Chairman Hackney questioned how this would work in a no-notice situation. He gave an example of his concern: In a situation of a stalker, if an employer goes to the magistrate or the court without the target of the stalking and asks for a civil no-contact order, what must the employer be required to show? He asked if there should not be some type of eminent harm standard such as in temporary restraining orders when issuing an order?

Mr. Bruce Thompson, Society for Human Resource Management, was recognized and said that if the ex parte requirement remains in the bill he thought there should be some attempt to show evidence of service or notice.

Mr. Will Polk, Office of the Attorney General, was recognized and concurred with Mr. Thompson.

Representative Ross noted that in some situations of eminent danger, there could be a need for law enforcement to be involved.

Mr. Thompson stated that it would not be desirable for the ex parte opportunity to be used by the employer against an employee.

Mr. Eddie Caldwell, North Carolina Sheriffs' Association, questioned a technical portion of the bill on page 5, line 7, involving specific instructions directed to law enforcement personnel regarding enforcement of orders. He said that the bill does not tell how the officer may enforce the order. He said that typically, law enforcement officers do not enforce civil orders. He said that the bill implies that the General Assembly wants law enforcement to do more than they are authorized to do, but does not tell them **wha**t to do. He said that if the General Assembly wants law enforcement to do more than they are currently authorized to do, the Association would like to be told what

to do. If this were not the intent, the Association would like for this provision to be removed from the bill.

Chairman Hackney stated that the suggestions made during the discussion would be incorporated into a new committee substitute after consulting with sponsors of the bill, the attorneys and committee staff.

The meeting was adjourned at 10:45 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

ATTACHMENT I

HOUSE JUDICIARY I COMMITTEE

THURSDAY JULY 1, 2004

10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 916 – PREVENT PERSONAL AND WORKPLACE VIOLENCE
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — July 1, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Okun	NC State AFL-CIO
Rick Zechini	NC Assn. of Educators
Patricia Ramsey	NC Assn of county comm.
John Phelps	NCLM
Luke Conley	Gov. office
John Mattox?	COG office

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 1, 2004 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Kimbrell	Parker Poe
Bruce Thompson	Parker Poe
Will Pulk	NCDOJ
Mary Gurganus	NC Bar Assoc.
Jo McCants	AOC
Monika Johnson Hostler	NCCADA
JoAnna Stevens	NCCADA
Beth Froehling	NCCADV
[illegible]	[illegible]
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Off Assn
Joe Dick	Gov. Off.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 916*
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S916-CSST-99 [v.7]

6/30/2004 9:38:22 PM

Short Title: Prevent Workplace Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 23.

"Workplace Violence Prevention.

"**§ 95-260. Definitions.**

The following definitions apply in this Article:

(1) Civil no-contact order. – An order granted under this Article, which includes a remedy authorized by G.S. 95-264.

(2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

(3) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under

circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

"**95-261. Civil no-contact orders; persons protected.**

A complaint for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to their participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation.

"**95-262. Commencement of action; venue.**

(a) An action for a civil no-contact order is commenced by filing a complaint for a civil no-contact order in any civil district court.

(b) A complaint for a civil no-contact order may be filed in the county where the unlawful conduct took place.

"**95-263. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Article shall require the respondent to answer or appear in court within 10 days. Attachments to the summons or notice shall include the complaint for the civil no-contact order and supporting affidavits, if any, or any temporary civil no-contact order that has been issued.

(b) Service of the summons and attachments shall be by the Sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the Sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served or given notice in accordance with this section and fails to appear as directed or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**95-264. Civil no-contact order; remedy.**

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.

(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.

(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.

(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.

(5) Order the respondent not to contact by telephone, written communication or electronic means the employer or the employer's employee at the employer's workplace.

(6) Order other relief deemed necessary and appropriate by the court.

(c) Monetary damages are not recoverable as a remedy under this Article.

"**95-265. Temporary civil no-contact order; court holidays and evenings.**

(a) The court may issue a temporary civil no-contact order, even without evidence of service of process or notice, if the court finds from specific facts shown that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given any prior notice or greater notice than was actually given of the complainant's efforts to obtain judicial relief.

(b) If the respondent appears in court for this hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of G.S. 95-266 have been met, the court may issue a permanent order.

(c) When the court is unavailable at the close of business, the complainant may file a complaint for a temporary order before any available judge or magistrate who may grant relief under this Article. If the judge or magistrate finds that there is an immediate and present danger of abuse against the complainant or employee of the complainant and that the complainant has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order.

"**95-266. Permanent civil no-contact order.**

Upon a finding that the employee has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order shall issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default.

"**95-267. Duration; extension of orders.**

(a) Unless reopened, extended, or voided by entry of an order of greater duration, a temporary civil no-contact order shall be effective for not more than 21 days.

(b) Except as otherwise provided in this section, a permanent civil no-contact order shall be effective for a fixed period of time, not to exceed one year. A permanent civil no-contact order entered in conjunction with another civil proceeding shall remain in effect as follows:

(1) If entered as preliminary relief in the other civil proceeding, until entry of final judgment in the other civil proceeding.

(2) If incorporated into the final judgment in the other civil proceeding, until the civil no-contact order is vacated or modified.

(3) If incorporated in an order for involuntary commitment, until termination of both the involuntary commitment and any voluntary commitment, or for a fixed period of time not exceeding one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 95-265(c).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**95-268. Contents of orders.**

(a) A civil no-contact order shall state the following:

(1) The name of each person that the court finds was the victim of unlawful conduct by the respondent and the name of any other person protected by the order. The order shall further state that any person named in the order is protected by this Article.

(2) The date and time the civil no-contact order was issued, whether it is a temporary or permanent order, and the duration of the order.

(3) The date, time, and place for any scheduled hearing for extension of the civil no-contact order or for any other order of greater duration or scope.

(4) For each remedy in a temporary civil no-contact order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given.

(b) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**95-269. Notice of orders.**

(a) The clerk of court shall deliver on the same day that a civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) Any order extending, modifying, or revoking any civil no-contact order shall be recorded, issued, and served in accordance with the provisions of this Article.

"**95-270. Violation of valid order.**

A violation of an order entered pursuant to this Article is punishable as contempt of court.

"**95-271. Enforcement of orders.**

(a) A valid protective order entered pursuant to this Chapter may be enforced by any North Carolina law enforcement officer with subject matter and territorial jurisdiction without further orders of the court.

(b) The law enforcement officer may verify the existence of a civil no-contact order by telephone, radio, or electronic communication with a law enforcement agency.

"**95-272. Employment discrimination unlawful.**

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee for taking reasonable time off from work to obtain or attempt to obtain any relief provided by Chapter 50B. The employee shall notify the employer of the reason for taking time off at the time the request is made, and if practicable, shall make the request and state the reason in writing. If requested by the employer, the employee shall also provide documentation to the employer of the reason for taking time off. Documentation may include a copy of a protective order or other evidence that the employee has appeared in court. The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

"**95-273. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. If House Bill 951, 2003 Session, becomes law, G.S. 95-272 as set out in Section 1 of this act reads as rewritten:

"**95-272. Employment discrimination unlawful.**

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee for taking reasonable time off from work to obtain or attempt to obtain any relief provided by ~~Chapter 50B~~Chapter 50B or Chapter 50C. The employee shall notify the employer of the reason for taking time off at the time the request is made, and if practicable, shall make the request and state the reason in writing. If requested by the employer, the employee shall also provide documentation to the employer of the reason for taking time off. Documentation may include a copy of a protective order or other evidence that the employee has appeared in court. The

Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

SECTION 3. This act becomes effective December 1, 2004, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

House Judiciary I Committee

July 8, 2004

Minutes

The House Judiciary I Committee met on Thursday, July 8, 2004. The Chairman, Representative Hackney, called the meeting to order at 10:00 a.m. The following members were present: Representatives Capps, Fisher, Insko, Ross, Sexton, and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney announced that it was his hope to complete work on Senate Bill 916 during the meeting. He further stated that the Senate had placed a number of bills into their budget and that the House negotiators are trying to maintain a reasonable position that this should not happen. He said that part of the House's offers to the Senate have been to take them out and run them through a Judiciary Committee. He said that one of those provisions would be offered later in the meeting for the Committee's review.

Chairman Hackney also said that the criminal law discovery bill had been referred to the Committee and that it would need to be dealt with before the end of the Session.

Chairman Hackney told the Committee that the Civil No-Contact bill and Prevent Workplace Violence bill had been running concurrently and that the Senate had made quite a few changes, with many of them being at the request of the Committee Counsel as a result of Committee discussion in order to keep the bills procedurally identical.

Ms. Erika Churchill, Committee Counsel, was recognized to explain the changes in the most recent proposed House committee substitute to Senate Bill 916, AN ACT TO ESTABLISH CIVIL NO-CONTRACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT, (Attachment III). She said that language had been changed to allow for an employer to file a motion **in the cause** of an existing lawsuit in addition to filing a verified complaint to initiate the proceedings for the protective order. Chairman Hackney reminded the Committee that a motion **in the cause** is asking the court to do something in an already existing lawsuit as opposed to filing a new lawsuit.

Ms. Churchill said that language had been removed that would have allowed the respondent to appear in court to answer the complaint. This would require the respondent to answer the complaint within ten days of service.

Ms. Churchill stated that in order to conform to House Bill 951, the provision that stated that no monetary damages are available under this article was removed. Ms. Churchill pointed out that language was added on page 3, lines 19-41 as a result of the discussion during the previous meeting regarding temporary orders and how they would

be obtained. Additional changes were called to the attention of the Committee. All changes are outlined in the bill summary prepared by Ms. Churchill, (Attachment IV).

Representative Ross commended all the parties who had worked on the bill. She moved that the proposed House committee substitute (v. 11) be given a favorable report and that the original bill be given an unfavorable report. The motion carried, (Attachment V).

Chairman Hackney stated that Senate Bill 52, AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS, was a bill introduced by Senator Clodfelter last session that was never considered by the Committee. He said that Senator Clodfelter had agreed for his bill to be used as a vehicle for the budget negotiation provision that he had mentioned at the start of the meeting. A proposed House committee substitute was distributed, (Attachment VI). He said that the bill involves the privacy of mediations at the University of North Carolina.

Representative Sexton moved adoption of the proposed House committee substitute for the purpose of discussion. The motion carried.

Ms. Churchill said that the committee substitute would clarify that statements made and conduct occurring during personnel mediations involving The University of North Carolina system, are not admissible in any action involving that personnel matter. She said that similar language had already enacted regarding mediations in civil district court, criminal district court, civil Superior Court, criminal Superior Court and also with regards to several particular insurance claims. She said that the language tracks the existing language in the General Statues. She also stated that the mediator could not be subpoenaed to testify in another action involving that personnel matter.

Mark Fleming, University of North Carolina, spoke in support of the bill.

Representative Insko asked if this differs from the way other state employees are treated. Chairman Hackney responded that it was his understanding that there is no provision like this for state employee personnel mediation generally. He noted that were it not so near the end of the Session, he would suggest that the Committee discuss that state employees be included.

Representative Ross stated concern of the language on page 1, lines 20-23. Chairman Hackney agreed with her concern.

Chairman Hackney reminded that Committee that additional issues might come before the Committee that could possibly be included in this bill and that it was his plan to hold the bill until the following week. He also announced that persons who were interested in the criminal law discovery bill should obtain a copy of the Senate language that was attached to Representative Ellis' House Bill 1139 and be prepared to hear that at the next meeting.

The meeting was adjourned at 10:40 a.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE

THURSDAY JULY 8, 2004

10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

SENATE BILL 916 – PREVENT PERSONAL AND WORKPLACE VIOLENCE
SENATOR CLODFELTER

VISITOR REGISTRATION SHEET

House Judiciary I — **Name of Committee**

July 8, 2004 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER POE
Tracy Kimbrell	Parker Poe
Will Polk	NCDOJ
Monika Johnson Hostler	NCCASA
Jerilyn Lanham Meckler	RWHRMA
Amy Velowsek	RWHRMA
James Andrews	NC State AFL-CIO
Bill Rowe	NC Justice Center
Donna Stevens	NCCAJA
Hugh Tilson	NCHA
Johanna Henry	UNC-W

VISITOR REGISTRATION SHEET

House Judiciary I — July 8, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rich Webb	NCGA Intern
Elizabeth Self	NCGA Intern
Mary K Hackney	NCGA Intern
Mark Fleming	University System
Lad Rubert	CJLC
Hal Miller	NCAECT
Bill Hester	Allied Domecq
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
Mary Georgens	NC Bar Assoc
Jon Dell	Com Cts

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 916*
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S916-CSST-99 [v.11]

7/6/2004 2:49:42 PM

Short Title: Prevent Workplace Violence. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 23.

"Workplace Violence Prevention.

"**§ 95-260. Definitions.**

The following definitions apply in this Article:

(1) Civil no-contact order. – An order granted under this Article, which includes a remedy authorized by G.S. 95-264.

(2) Employer. – Any person or entity that employs one or more employees. Employer also includes the State of North Carolina and its political subdivisions.

(3) Unlawful conduct. – Unlawful conduct means the commission of one or more of the following acts upon an employee, but does not include acts of self-defense or defense of others:

a. Attempting to cause bodily injury or intentionally causing bodily injury.

b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. 14-277.3, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety.

c. Willfully threatening, orally, in writing, or by any other means, to physically injure the employee in a manner and under

circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

"**95-261. Civil no-contact orders; persons protected.**

An action for a civil no-contact order may be filed as a civil action in district court by an employer on behalf of an employee who has suffered unlawful conduct from any individual that can reasonably be construed to be carried out, or to have been carried out, at the employee's workplace. The employee that is the subject of unlawful conduct shall be consulted prior to seeking an injunction under this Article in order to determine whether any safety concerns exist in relation to the employee's participation in the process. Employees who are targets of unlawful conduct who are unwilling to participate in the process under this Article shall not face disciplinary action based on their level of participation or cooperation.

"**95-262. Commencement of action; venue.**

(a) An action for a civil no-contact order is commenced by filing a verified complaint for a civil no-contact order in any civil district court or by filing a motion in any existing civil action.

(b) A complaint or motion for a civil no-contact order shall be filed in the county where the unlawful conduct took place.

"**95-263. Process for action for no-contact order.**

(a) Any action for a civil no-contact order requires that a separate summons be issued and served. The summons issued pursuant to this Article shall require the respondent to answer within 10 days of the date of service. Attachments to the summons shall include the verified complaint for the civil no-contact order and any temporary civil no-contact order that has been issued and the notice of hearing on the temporary civil no-contact order.

(b) Service of the summons and attachments shall be by the sheriff by personal delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the respondent cannot with due diligence be served by the sheriff by personal delivery, the respondent may be served by publication by the complainant in accordance with Rule 4(j1) of the Rules of Civil Procedure.

(c) The court may enter a civil no-contact order by default for the remedy sought in the complaint if the respondent has been served in accordance with this section and fails to answer as directed, or fails to appear on any subsequent appearance or hearing date agreed to by the parties or set by the court.

"**95-264. Civil no-contact order; remedy.**

(a) Upon a finding that the employee has suffered unlawful conduct committed by the respondent, the court may issue a temporary or permanent civil no-contact order. In determining whether or not to issue a civil no-contact order, the court shall not require physical injury to the employee or injury to the employer's property.

(b) The court may grant one or more of the following forms of relief in its orders under this Article:

(1) Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.
(2) Order the respondent to cease stalking the employer's employee at the employer's workplace.
(3) Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
(4) Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
(5) Order the respondent not to contact by telephone, written communication or electronic means the employer or the employer's employee at the employer's workplace.
(6) Order other relief deemed necessary and appropriate by the court.

(c) A civil no-contact order shall include the following notice, printed in conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable as contempt of court which may result in a fine or imprisonment.'

"**95-265. Temporary civil no-contact order; court holidays and evenings.**

(a) A temporary civil no-contact order may be granted ex parte, without written or oral notice to the respondent, only if both of the following are shown:
(1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the complainant, or the complainant's employee before the respondent can be heard in opposition.
(2) Either one of the following:
a. The complainant certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.
b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would like occur if the respondent were given any prior notice of the complainant's efforts to obtain judicial relief.

(b) Every temporary civil no-contact order granted without notice shall:
(1) Be endorsed with the date and hour of issuance.
(2) Be filed immediately in the clerk's office and entered of record.
(3) Define the injury, state why it is irreparable and why the order was granted without notice.
(4) Expire by its terms within such time after entry, not to exceed 10 days.
(5) Give notice of the date of hearing on the temporary order as provided in G.S. 95-267(a).

(c) If the respondent appears in court for the hearing for a temporary order, the respondent may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of

this section, if all requirements of G.S. 95-266 have been met, the court may issue a permanent order.

(d) When the court is not in session, the complainant may file a complaint for a temporary order before any judge or magistrate designated to grant relief under this Article. If the judge or magistrate finds that there is an immediate and present danger of abuse against the complainant or employee of the complainant and that the complainant has satisfied the prerequisites set forth in subsection (a) of this section, the judge or magistrate may issue a temporary civil no-contact order. The chief district court judge may designate for each county at least one judge or magistrate to be reasonably available to issue temporary civil no-contact orders when the court is not in session.

"**95-266. Permanent civil no-contact order.**

Upon a finding that the employee has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the respondent, the respondent has answered the complaint and notice of hearing was given, or the respondent is in default. No permanent civil no-contact order shall be issued without notice to the respondent.

"**95-267. Duration; extension of orders.**

(a) A temporary civil no-contact order shall be effective for not more than 10 days as the court fixes, unless within the time so fixed the temporary civil no-contact order, for good cause shown, is extended for a like period or a longer period if the respondent consents. The reasons for the extension shall be stated in the temporary order. In case a temporary civil no-contact order is granted without notice and a motion for a permanent civil no-contact order is made, it shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion for a permanent civil no-contact order comes on for hearing, the complainant may proceed with a motion for a permanent civil no-contact order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two days' notice to the complainant or on such shorter notice to that party as the judge may prescribe, the respondent may appear and move its dissolution or modification. In that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) A permanent civil no-contact order shall be effective for a fixed period of time not to exceed one year.

(c) Any temporary or permanent order may be extended one or more times, as required, provided that the requirements of G.S. 95-265 or G.S. 95-266, as appropriate, are satisfied. The court may renew a temporary or permanent order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the

requested extension. Extensions may be granted only in open court and not under the provisions of G.S. 95-265(d).

(d) Any civil no-contact order expiring on a court holiday shall expire at the close of the next court business day.

"**95-268. Notice of orders.**

(a) The clerk of court shall deliver on the same day that a civil no-contact order is issued, a certified copy of that order to the sheriff.

(b) Unless the respondent was present in court when the order was issued, the sheriff shall serve that order upon the respondent and file proof of service in the manner provided for service of process in civil proceedings. If process has not yet been served upon the respondent, it shall be served with the order.

(c) A copy of the order shall be issued promptly to and retained by the police department of the municipality of the employer's workplace. If the employer's workplace is not located in a municipality or in a municipality with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the employer's workplace is located.

(d) Any order extending, modifying, or revoking any civil no-contact order shall be recorded, issued, and served in accordance with the provisions of this Article.

"**95-269. Violation of valid order.**

A violation of an order entered pursuant to this Article is punishable as contempt of court.

"**95-270. Employment discrimination unlawful.**

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee for taking reasonable time off from work to obtain or attempt to obtain any relief provided by Chapter 50B. The employee shall notify the employer of the reason for taking time off at the time the request is made, and if practicable, shall make the request and state the reason in writing. If requested by the employer, the employee shall also provide documentation to the employer of the reason for taking time off. Documentation may include a copy of a protective order or other evidence that the employee has appeared in court. The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

"**95-271. Scope of Article; other remedies available.**

This Article does not expand, diminish, alter, or modify the duty of any employer to provide a safe workplace for employees and other persons. This Article does not limit the ability of an employer, employee, or victim to pursue any other civil or criminal remedy provided by law. This Article does not apply in circumstances where an employee or representative of employees is engaged in union organizing, union activity, a labor dispute, or any activity or action protected by the National Labor Relations Act, 29 U.S.C. § 151, et seq. Nothing in this Article is intended to change the National Labor Relations Act's preemptive regulation of legally protected activities, nor to change the right of the State and its courts to regulate activities not protected by the National Labor Relations Act."

SECTION 2. If House Bill 951, 2003 Session, becomes law, G.S. 95-270 as set out in Section 1 of this act reads as rewritten:

"**95-270. Employment discrimination unlawful.**

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee for taking reasonable time off from work to obtain or attempt to obtain any relief provided by ~~Chapter 50B~~Chapter 50B or Chapter 50C. The employee shall notify the employer of the reason for taking time off at the time the request is made, and if practicable, shall make the request and state the reason in writing. If requested by the employer, the employee shall also provide documentation to the employer of the reason for taking time off. Documentation may include a copy of a protective order or other evidence that the employee has appeared in court. The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

SECTION 3. This act becomes effective December 1, 2004, and applies to actions that give rise to civil no-contact orders issued under this act on or after that date.

SENATE BILL 916:
Prevent Workplace Violence.

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Senator Clodfelter
Date:	July 8, 2004	**Summary by:**	R. Erika Churchill
Version:	S916-CSST-99v11		Committee Counsel

SUMMARY: ***The proposed committee substitute sets up a process by which an employer can get a temporary restraining order and an injunction on behalf of an employee who has suffered unlawful conduct at the workplace.***

BILL ANALYSIS: The proposed committee substitute creates a new Article 23 of Chapter 95 that would allow an employer to obtain a protective order on behalf of an employee who was suffered unlawful conduct as follows:

G.S. 95-260 would define unlawful conduct to include infliction of bodily injury, harassment, or threats.

G.S. 95-261 sets out a procedure whereby an employer may seek an injunction to prevent the prohibited conduct. The employer files a complaint, or a motion in the cause of an existing civil suit, on behalf of an employee who has suffered unlawful conduct that can be reasonably construed to be carried out, or was carried out at the employee's workplace. The employee is to be consulted prior to the filing of the complaint, and cannot face disciplinary action based on their level of participation or cooperation.

G.S. 95-262 provides that a complaint is commenced by the filing of the complaint in civil district court in the county where the unlawful conduct took place.

G.S. 95-263 provides for service of process with respect to the civil no-contact complaint and order.

G.S. 95-264 sets forth the available remedies as follows:

- Order the respondent not to visit, assault, molest, or otherwise interfere with the employer or the employer's employee at the employer's workplace, or otherwise interfere with the employer's operations.
- Order the respondent to cease stalking the employer's employee at the employer's workplace.
- Order the respondent to cease harassment of the employer or the employer's employee at the employer's workplace.
- Order the respondent not to abuse or injure the employer, including the employer's property, or the employer's employee at the employer's workplace.
- Order the respondent not to telephone the employer or the employer's employee at the employer's workplace.
- Order other relief deemed necessary and appropriate by the court.

G.S. 95-265 authorizes the courts to enter temporary civil no-contact orders not to exceed 10 days duration, with renewal of the temporary order optional.

G.S. 95-266 allows the court to enter a permanent civil no-contact order, not to exceed one year in duration if the complainant has meet the service of process requirements and the respondent has appeared to respond to the allegations, or failed to answer.

G.S. 95-267 provides that temporary orders are to be for no more than 10 days, and permanent orders are for a fixed period of time not to exceed one year. The order may be extended upon motion of the complainant.

G.S. 95-268 requires the clerk of court to deliver a certified copy of the order to the sheriff on the day the order is entered. The sheriff is required to serve a copy of the order on the respondent unless the respondent was present in court when the order was entered. Additionally, a copy of the order is to be retained by the law enforcement agency with jurisdiction over the workplace

G.S. 95-269 provides that a violation of the order is punishable by contempt of court.

G.S. 95-270 provides that an employee cannot be disciplined or fired for taking reasonable time off work to seek a protective order under Chapter 50B.

G.S. 95-271 clarifies that the Article is addition to other remedies available, and does not preclude those possible remedies.

EFFECTIVE DATE: The act would become effective December 1, 2004, and applies to actions the give rise to civil no-contact orders on or after that date.

2003 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
S.B. 916 A BILL TO BE ENTITLED AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE PROTECTION OF EMPLOYEES FROM WORKPLACE VIOLENCE AND INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL CONDUCT.

☐ 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 (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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SENATE BILL 52
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S52-CSST-110 [v.4]

7/8/2004 9:39:37 AM

Short Title: Clarifications regarding mediation. (Public)

Sponsors:

Referred to:

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONNEL MEDIATIONS BY THE UNIVERSITY OF NORTH CAROLINA SYSTEM ARE NOT CONSIDERED PRACTICE LAW, THAT RECORDS CREATED AS PART OF THOSE PERSONNEL MEDIATIONS ARE NOT PUBLIC RECORDS, AND THAT PARTICIPANTS IN THOSE PERSONNEL MEDIATIONS ARE TREATED SIMILARLY TO PARTICIPANTS IN OTHER MEDIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-3.3. Mediation matters.**

(a) Evidence of statements made and conduct occurring in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any proceeding in any action on the same claim or any other claim, administrative or judicial, except in a proceeding to enforce a signed settlement agreement. Such evidence is not a public record under Chapter 132 of the General Statutes. Any evidence discoverable or admissible prior to the mediation shall remain discoverable and admissible, whether or not it is presented or discussed during mediation.

(b) No mediator, person training to become a mediator, nor participant in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall be compelled to testify or produce evidence in any civil proceeding for any purpose, except to attest to the signing of any such agreement."

SECTION 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by ~~G.S. 7A-38.5~~.G.S. 7A-38.5 or by mediators of personnel matters for The University of North Carolina or a constituent institution."

SECTION 3. This act is effective when it becomes law.

House Judiciary I Committee

July 12, 2004

Minutes

The House Judiciary I Committee met on Monday, July 12, 2004. The Chairman, Representative Hackney, called the meeting to order at 4:00 p.m. Rep. Hackney and the following members were present: Representatives Capps, Fisher, Insko, Ross, and West. A copy of the agenda and visitor registration is attached, (Attachments I and II).

Chairman Hackney reminded the Committee that Senate Bill 52, AN ACT TO CLARIFY THE COURT'S DISCRETION TO ALLOW COURT COSTS, was being used as a vehicle for a bill that would include the issue of personnel mediations in the University of North Carolina system, and legislation regarding open criminal discovery taken from Senate Committee Substitute for House Bill 1139, AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES. A new proposed House Committee Substitute for Senate Bill 52 was distributed, (Attachment III). A previous proposed House Committee Substitute for Senate Bill 52 was adopted and discussed during the July 8 meeting of the Committee dealing with the mediation issue, but concerns had been expressed with some of the language contained in the bill.

Representative Ross moved adoption of the new proposed House Committee Substitute for Senate Bill 52 for the purpose of discussion. The motion carried.

Senator Rand and Representative Kiser, who had been a part of a negotiating team that worked on the legislation, were recognized for opening comments on the discovery section of the bill. Senator Rand stated that the negotiating team had made an effort to be as inclusive as possible in the preparation of the bill. He thanked the District Attorney's Association, the Academy of Trial Lawyers, the Attorney General's Office and others who were involved in the drafting of the legislation. He said that he felt they had achieved a balanced approach regarding the question of discovery in criminal cases.

Senator Rand said that the bill would require that upon the defendant's request, District Attorneys must give open file discovery to defense lawyers before trial in felony criminal cases. He said that if it was determined that the release of some information could be damaging, the District Attorney could request that an ex parte hearing be held before a Superior Court judge who could order such release closed. If this is done, the other party is placed on notice that a hearing was held. Senator Rand said that the bill goes toward the federal rules and more toward a system that will be similar to civil discovery so that each party will know what the other side's case is about.

Representative Kiser spoke in support of the bill and thanked those involved in the discussions leading up to the drafting of the legislation.

Mr. Jeff Hunt, representing the District Attorney's Association, Mr. Greg McLeod, Office of the Attorney General, and Mr. Dick Taylor, Academy of Trial Lawyers were each recognized and spoke in support of the bill.

Ms. Erika Churchill, Committee Counsel, was then recognized for staff explanation of the sections of the bill regarding personnel mediations in the UNC system. She said that Sections 1 and 2 of the bill were the same as that which the Committee had discussed on July 8 and would allow that evidence of statements made and conduct occurring in a mediation of a personnel matter involving the University of North Carolina or a constituent institution would not be admissible in a court of law. She said that no mediator, person training to become a mediator, or a participant in the mediation would be compelled to testify or produce evidence with respect to the mediation of the personnel matter.

Mark Fleming, representing the University system said that this was language adopted by the UNC Board of Governors.

Representative Capps asked how this version differed from the version discussed on July 8. Ms. Churchill replied that the previous version would have allowed that one could not be compelled to testify in **any** civil procedure, and that the new version narrows this down to any proceeding involving that actual personnel matter that was the subject of the mediation.

Ms. Susan Sitze, Committee Counsel, was recognized for an explanation of the open discovery section of the bill. She said that two minor technical had been made to House Bill 1139. She reviewed the discovery portion of the committee substitute offering a section-by-section explanation. A bill analysis, prepared by Ms. Sitze is attached, (Attachment IV).

Ms. Sitze explained an additional change on page 7, line 38 regarding giving notice of defenses to the State. She said that the original version stated, "no later than 20 working days before the date the case is set for trial pursuant to G.S. 7A-49.4. She said that she believed the intent was to be 20 days before the actual trial date as it is set by that statute. She said it could also have been read to be 20 days before the date the judge actually chooses that trial date. She stated that she had rewritten to language to state, "no later than twenty working days before the date set for trial."

Mr. Hunt was recognized and said that he believed the intent was to trigger earlier rather than later interpretations.

Chairman Hackney asked Ms. Sitze to read the original Senate language. That language read: "notice of defense must be given no later than 20 working days before the date the case is set for trial pursuant to G.S. 7A-49.4. She indicated that she could

interpret that language one of two ways: 1. before the date that the case is set for trial; or 2. before the date the trial is occurring.

Chairman Hackney stated that he felt that both versions of the language said the same thing. Considerable discussion followed regarding how this language could be interpreted. Senator Rand stated that the Senate had agreed to the original language, and if it was felt that it made no difference, he preferred to keep the language as the Senate had drafted. Mr. Hunt, Mr. Taylor, Mr. McLeod spoke in support of keeping the Senate language.

Chairman Hackney stated that if all the parties were in agreement, the language could remain as written in the Senate committee substitute, but he added that he did not think the language means what Mr. Hunt said he thought it meant. Representative Ross expressed agreement with Chairman Hackney.

There was discussion regarding Section 10 of the committee substitute. This section was not a part of the Senate version. It would require law enforcement or other agencies involved in the investigation to make their files available to the State, upon request. Ms. Sitze noted that the language in Senate version only applied to the arresting agency, and that it could be possible to have situations where more than one agency would be involved in an investigation. Mr. Hunt expressed discomfort with the new language, but said that if it remained in the bill, he would prefer that the requirement be automatic, rather than having to have it be requested. Mr. Taylor and Mr. McLeod both concurred and urged the Committee to consider the original language of the bill.

Senator Rand and Representative Kiser spoke in support of the Senate language. The Committee agreed to return to the language found in the Senate Committee Substitute for House Bill 1139.

Representative Ross expressed concern for the language, "under appropriate safeguards," on page 6, lines 2 and 3. She reminded the Committee that the DNA innocence bill contained language regarding the sharing of physical evidence and samples and that many hours had been spent trying to determine how to share a DNA sample. She wanted to know where the phrase came from in this bill, whether there is a way to interpret the phrase, and whether there could be more direction regarding that language.

Mr. Taylor said that the language was borrowed from federal rules and rules from other jurisdictions, but that he did not know what the appropriate safeguards were.

Representative Ross stated that she wanted to be sure that there was a legal interpretation about what "appropriate safeguards" are so that over time there would not be a fight about what those safeguards are. She asked if the term appears somewhere else in law and if it has had some interpretation so that it is not a brand new term that our courts will now have to interpret.

Mr. Hunt replied that they might have to go to another jurisdiction in order to obtain interpretation.

Chairman Hackney asked if it was the desire of the Committee and the interested parties to return to the Senate language. The Committee agreed to return to the Senate language.

In order to allow counsel time to prepare an amendment, the Committee turned its attention to House Bill 1139, AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES (Attachment V). Chairman Hackney stated that in order to be able to remove the discovery section in conference, the Committee would need to vote not to concur in this bill.

Representative Ross moved that the Committee recommend that the House do not concur in House Bill 1139. The motion carried, (Attachment VI).

The Committee returned to Senate Bill 52 and Representative Ross was recognized to offer an amendment, (Attachment VII). The amendment would rewrite line 38 on page 7 to read: "must be given within 20 working days after the case is set for." Upon vote of the Committee, the amendment was adopted.

Representative Ross offered an amendment to delete lines 19-30 on page 9 of Senate Bill 52. This amendment would remove Section 10 from the bill, (Attachment VIII). Upon vote of the Committee, the amendment was adopted.

Representative Fisher moved that the proposed House committee substitute for Senate Bill 52, as amended, be rolled into a new House committee substitute, and that it be given a favorable report, unfavorable to the Senate committee substitute. The motion carried, (Attachment IX). A final copy of the House committee substitute is attached, (Attachment X).

The meeting was adjourned at 5:15 p.m.

Representative Joe Hackney
Chairman

Emily Reynolds Freeman
Committee Clerk

HOUSE JUDICIARY I COMMITTEE
MONDAY JULY 12, 2004
10:00 AM

AGENDA

WELCOME AND OPENING REMARKS

HOUSE BILL 1139 – RAPIST PARENTAL RIGHTS/OPEN CRIMINAL DISCOVERY
REPRESENTATIVE ELLIS

SENATE BILL 52 – CLARIFY ALLOWANCE OF COURT COSTS
SENATOR CLODFELTER

ATTACHMENT II

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Gorgianus	NC Bar Association
Beth Gulley	
Dawn Bryant	Raleigh Police
Bill Wilson	NCATC
Dick Taylor	NCATA
Gary McLeod	NCAGO
Jo B. McCants	AOC
Steve Woodson	NC Farm Bureau
Mark Fleming	University System
Amy Jo Horne	NCMS
Porter	Smith Anderson.

VISITOR REGISTRATION SHEET

House Judiciary I — July 12, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roy Rogers	Victorville, CA.
Barbara S. Canales	BSCGR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 52
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S52-CSST-110 [v.12]

7/12/2004 3:08:57 PM

Short Title: Clarifications regarding mediation. (Public)

Sponsors:

Referred to:

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONNEL MEDIATIONS BY THE UNIVERSITY OF NORTH CAROLINA SYSTEM ARE NOT CONSIDERED "PRACTICE LAW"; THAT RECORDS CREATED AS PART OF THOSE PERSONNEL MEDIATIONS ARE NOT PUBLIC RECORDS; AND THAT PARTICIPANTS IN THOSE PERSONNEL MEDIATIONS ARE TREATED SIMILARLY TO PARTICIPANTS IN OTHER MEDIATIONS, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-3.3. Mediation matters.**

(a) Evidence of statements made and conduct occurring in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any proceeding in any action on the same claim or any other claim, administrative or judicial, except in a proceeding to enforce a signed settlement agreement. Such evidence is not a public record under Chapter 132 of the General Statutes. Any evidence discoverable or admissible prior to the mediation shall remain discoverable and admissible, whether or not it is presented or discussed during mediation.

(b) No mediator, person training to become a mediator, nor participant in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall be compelled to testify or produce evidence with respect to

the mediation of the personnel matter in any civil proceeding, except to attest to the signing of any such agreement."

SECTION 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by ~~G.S. 7A-38.5~~.G.S. 7A-38.5 or by mediators of personnel matters for The University of North Carolina or a constituent institution."

SECTION 3. G.S. 15A-902 reads as rewritten:

"**§ 15A-902. Discovery procedure.**

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a ~~request,~~ request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after either the probable-cause hearing or the date ~~he~~ the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before ~~he~~ the defendant has been afforded or waived a probable-cause hearing, ~~he~~ the defendant may

as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after the later of:

(1) The defendant's consent to be tried upon a bill of information, or the service of notice upon ~~him~~ the defendant that a true bill of indictment has been found by the grand jury, or

(2) The appointment of ~~counsel whichever is later.~~ counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for ~~him~~ the defendant prior to or during a probable-cause hearing or prior to execution by ~~him~~ the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part."

SECTION 4. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

~~(a) Statement of Defendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the prosecutor; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial; except that disclosure of such a statement is not required if it was made to an informant whose identity is a prosecution secret and who will not testify for the prosecution, and if the statement is not exculpatory. If the statement was made to a person other than a law enforcement officer and if the statement is then known to the State, the State must divulge the substance of the statement no later than 12 o'clock noon, on Wednesday prior to the beginning of the week during which the case is calendared for trial. If disclosure of the substance of defendant's oral statement to an informant whose identity is or was a prosecution secret is withheld, the informant must not testify for the prosecution at trial.~~

~~(b) Statement of a Codefendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the State intends to offer in evidence at their joint trial; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement made by a codefendant which the State intends to offer in evidence at their joint trial.~~

~~(c) Defendant's Prior Record. Upon motion of the defendant, the court must order the State to furnish to the defendant a copy of his prior criminal record, if any, as is available to the prosecutor.~~

~~(d) Documents and Tangible Objects. Upon motion of the defendant, the court must order the prosecutor to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, buildings and places, or any other crime scene, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State and which are material to the preparation of his defense, are intended for use by the State as evidence at the trial, or were obtained from or belong to the defendant.~~

~~(e) Reports of Examinations and Tests. Upon motion of a defendant, the court must order the prosecutor to provide a copy of or to permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecutor. In addition, upon motion of a defendant, the court must order the prosecutor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the prosecutor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case.~~

~~(f) Statements of State's Witnesses.~~

~~(1) In any criminal prosecution brought by the State, no statement or report in the possession of the State that was made by a State witness or prospective State witness, other than the defendant, shall be the subject of subpoena, discovery, or inspection until that witness has testified on direct examination in the trial of the case.~~

~~(2) After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the State to produce any statement of the witness in the possession of the State that relates to the subject matter as to which the witness has testified. If the entire contents of that statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.~~

~~(3) If the State claims that any statement ordered to be produced under this section contains matter that does not relate to the subject matter of the~~

~~testimony of the witness, the court shall order the State to deliver that statement for the inspection of the court in camera. Upon delivery the court shall excise the portions of the statement that do not relate to the subject matter of the testimony of the witness. With that material excised, the court shall then direct delivery of the statement to the defendant for his use. If, pursuant to this procedure, any portion of the statement is withheld from the defendant and the defendant objects to the withholding, and if the trial results in the conviction of the defendant, the entire text of the statement shall be preserved by the State and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this subsection, the court, upon application of the defendant, may recess proceedings in the trial for a period of time that it determines is reasonably required for the examination of the statement by the defendant and his preparation for its use in the trial.~~

~~(4) If the State elects not to comply with an order of the court under subdivision (2) or (3) to deliver a statement to the defendant, the court shall strike from the record the testimony of the witness, and direct the jury to disregard the testimony, and the trial shall proceed unless the court determines that the interests of justice require that a mistrial be declared.~~

~~(5) The term "statement," as used in subdivision (2), (3), and (4) in relation to any witness called by the State means~~

~~a. A written statement made by the witness and signed or otherwise adopted or approved by him;~~

~~b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital or an oral statement made by the witness and recorded contemporaneously with the making of the oral statements.~~

~~(g) DNA Laboratory Reports. The defendant shall have the right to obtain a copy of DNA laboratory reports provided to the district attorney revealing that there was a DNA match to the defendant that was derived from a CODIS match during a comparison search involving the defendant's DNA sample, in accordance with the procedure set forth in G.S. 15A-902.~~

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or

recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section."

SECTION 5. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure ~~of evidence~~ by the State – Certain ~~reports~~ information not subject to disclosure.**

(a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not require the production of reports, memoranda, or other internal documents made by the prosecutor, law enforcement officers, or other persons acting on behalf of the State in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~ The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(b) Nothing in this section prohibits ~~a prosecutor~~the State from making voluntary disclosures in the interest of ~~justice.~~justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 6. G.S. 15A-905 reads as rewritten:

"**§ 15A-905. Disclosure of evidence by the defendant – Information subject to disclosure.**

(a) Documents and Tangible Objects. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(d),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of Examinations and Tests. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(e),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession and control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial, when the results or reports relate to his testimony. In addition, upon motion of ~~a prosecutor,~~the State, the court must order the defendant to permit the ~~prosecutor~~ State to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it available to the defendant if the defendant intends to offer such evidence, or tests or experiments made in connection with such evidence, as an exhibit or evidence in the case.

(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

(1) Give notice to the State of the intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of defense as described in this subdivision is inadmissible against the defendant. Notice of defense must be given no later than 20 working days before the date set for trial pursuant to G.S. 7A-49.4, or such other later time as set by the court.

a. As to the defense of alibi, the court may order, upon motion by the State, the disclosure of the identity of alibi witnesses no later than two weeks before trial. If disclosure is ordered, upon a showing of good cause, the court shall order the State to

disclose any rebuttal alibi witnesses no later than one week before trial. If the parties agree, the court may specify different time periods for this exchange so long the exchange occurs within a reasonable time prior to trial.

b. As to only the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court.

(3) Give the State, at the beginning of jury selection, a written list of the names of all other witnesses whom the defendant reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the defendant certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the defendant did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(d) If the defendant voluntarily provides discovery under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (c) of this section."

SECTION 7. G.S. 15A-907 reads as rewritten:

"**§ 15A-907. Continuing duty to disclose.**

If a party, ~~subject to compliance with an order issued~~who is required to give or who voluntarily gives discovery pursuant to this Article, discovers prior to or during trial additional evidence or witnesses, or decides to use additional ~~evidence,~~evidence or witnesses, and the evidence or witness is or may be subject to discovery or inspection under this Article, ~~he~~ the party must promptly notify the attorney for the other party of the existence of the additional ~~evidence.~~evidence or witnesses."

SECTION 8. G.S. 15A-908(a) reads as rewritten:

"(a) Upon written motion of a party and a finding of good cause, which may include, but is not limited to a finding that there is a substantial risk to any person or physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, the court may at any time order that discovery or inspection be denied,

restricted, or deferred, or may make other appropriate orders. A party may apply ex parte for a protective order and, if an ex parte order is granted, the opposing party shall receive notice that the order was entered, but without disclosure of the subject matter of the order."

SECTION 9. G.S. 15A-910 reads as rewritten:

"**§ 15A-910. Regulation of discovery – Failure to comply.**

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or

(2) Grant a continuance or recess, or

(3) Prohibit the party from introducing evidence not disclosed, or

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice, or

(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article."

SECTION 10. Article 48 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-911. Production of files; law enforcement and investigative agencies.**

(a) Upon request of the State, all law enforcement or other agencies involved in the investigation of any felony offense alleged to have been committed by the defendant shall make their complete files available to the State. The term "file" includes, but is not limited to, defendant's statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the felony offense alleged to have been committed by the defendant.

(b) The requirements of subsection (a) of this section shall be a continuing obligation, and shall include notification to the district attorney of any new matters obtained following disposition of the defendant's case in the courts."

SECTION 11. G.S. 15A-959 reads as rewritten:

"**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

(a) If a defendant intends to raise the defense of insanity, ~~he~~ the defendant must ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a notice of ~~his~~ the defendant's intention to rely on the defense of ~~insanity.~~ insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) ~~If~~ In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether ~~he~~ the defendant had the mental state required for the offense charged, ~~he~~ the defendant must within ~~the time provided for the filing of pretrial motions under G.S. 15A-952(b)~~ a reasonable time prior to trial file a

notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

SECTION 12. G.S. 15A-501 is amended by adding a new subdivision to read:

"**§ 15A-501. Police processing and duties upon arrest generally.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

...

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty."

SECTION 13. Sections 3 through 12 of this act become effective October 1, 2004, and apply to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after October 1, 2004. The remainder of this act is effective when it becomes law.

SENATE BILL 52: Discovery Provisions

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	
Date:	July 12, 2004	**Summary by:**	Susan L. Sitze*
Version:	S52-CSST-110 [v.12]		Committee Counsel

SUMMARY:

Sections 3 through 12 of the act would rewrite the discovery rules in felony criminal cases, to include the disclosure of the complete investigative file by the State to the defendant; it also would require the defendant to notify the State as to expected defenses. The disclosure provisions are effective October 1, 2004 and apply to cases set for trial pursuant to G.S. 7A-49.4 on or after that date.

BACKGROUND:

The current law on disclosure in criminal cases provides that certain documents or matters be provided to the defendant upon motion of the defendant, including: defendant's statements; the substance of any oral statements; a co-defendant's statement; defendant's prior record; and documents that are material to the preparation of the defense, intended for use by the State as evidence, or were obtained from or belong to the defendant. The State must also provide any reports of examinations or tests, and allow the defendant to inspect and test the evidence if the State intends to offer the evidence (or tests or experiments in connection with the evidence) at trial. There is no requirement to disclose a witness's statement until such time as the witness has testified on direct examination.

Absent motion or request for discovery, the State is required--as a matter of constitutional law--to provide the defendant any evidence that would tend to exculpate the defendant.

BILL ANALYSIS:

Section 3: **[WAIVER OF WRITTEN REQUEST]**

Currently, before filing a motion for discovery before the judge, a party must make a request in writing that the other party comply voluntarily with the discovery request. The statute would allow the parties to waive the written request requirement.

Section 4: **[STATE DISCLOSURE REQUIREMENTS]**

This section of the act deletes the current disclosure provisions and re-writes them. Under the new provisions, the State must disclose:

- The complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" is defined to include: defendant's statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses. The defendant would have the right to inspect, examine, and test any physical evidence or sample.

- Within a reasonable time before trial, the State must give notice of any expert witnesses that it reasonably expects to call at trial. Reports of the results of examinations or tests would be furnished, as well as an expert's curriculum vitae, opinion, and the underlying basis for the opinion.
- Provide the defendant, at the beginning of jury selection, a list of witnesses whom the State reasonably expects to call at trial. The State may certify, in writing, that the disclosure of a witness's name may subject the witness or others to physical or substantial economic harm or coercion, or that there is another compelling reason not to disclose the name. The court retains discretion to allow any undisclosed witness to testify at trial.

Section 5: **[INFORMATION NOT SUBJECT TO DISCLOSURE]**

The State would not be required to disclose written materials prepared by the State for use at trial, or other documents to the extent that they contain opinions, theories, strategies, or conclusions of the prosecutor or the prosecutor's legal staff. The State is not prohibited from voluntary disclosure, and the law has no affect on any federal and State constitutional disclosure requirements.

Section 6: **[DEFENDANT'S DISCLOSURE REQUIREMENTS]**

Current law provides for the inspection of documents and other matters that the defendant intends to introduce into evidence. This section adds the following to the current law: notice to the State of the defenses of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of the defense is inadmissible.

- Alibi witnesses must be disclosed within two weeks of trial. Upon a showing of good cause, the State must disclose any rebuttal witnesses to the alibi defense at least one week before trial. Different time periods for disclosure may be agreed upon by the parties.
- As to the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, the defendant must provide specific information as to the nature and extent of the defense.

Section 7: **[CONTINUING DUTY]**

The law is amended to include "witness" to the current requirement that the parties disclose to the other party any evidence that is subject to disclosure, regardless of when it is obtained.

Section 8: **[PROTECTIVE ORDER]**

The act adds a provision to allow a party to seek, ex parte, a protective order to avoid the disclosure of a matter that is otherwise discloseable. A party will receive notice that the other party has obtained a protective order, but the subject matter of the order will not be disclosed.

Section 9: **[SANCTIONS]**

In determining the propriety of sanctions against a party for failing to comply with the discovery provisons, the judge must consider both the materiality of the subject matter and the totality of the circumstances surrounding the nondisclosure.

Section 10: **[LAW ENFORCEMENT & INVESTIGATION FILES]**

Requires any law enforcement or other agency involved in the investigation of any felony offense committed by the defendant to make their complete files available to the State, upon the State's request.

This is a continuing obligation and includes notification to the D.A. of any new matters obtained following disposition of the case.

Section 11: **[INSANITY DEFENSE]**

The section conforms the insanity defense notification section to the new disclosure provisions. The section requires that notice of expert testimony be given to the State within a reasonable time prior to trial even if the parties are not providing disclosure under the new statutory provisions.

Section 12: **[LAW ENFORCEMENT DISCLOSURE]**

The section requires that upon the arrest of a person, a law enforcement officer must make available to the State all materials and information acquired in the course of all felony investigations. The responsibility is a continuing affirmative duty.

The disclosure provisions are effective October 1, 2004 and apply to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after that date.

*Adapted from a summary originally by Hal Pell, Staff Attorney

S52-SMSA-discpcs-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 4

HOUSE BILL 1139

Committee Substitute Favorable 4/30/03
Senate Judiciary I Committee Substitute Adopted 7/1/04
Fourth Edition Engrossed 7/6/04

Short Title: Rapist Parental Rights/Open Crim. Discovery. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.2 reads as rewritten:

"**§ 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.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 2. G.S. 14-27.3 reads as rewritten:

"**§ 14-27.3. Second-degree rape.**

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

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

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

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 3. G.S. 14-27.7A reads as rewritten:

"**§ 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.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection, any person who is convicted under this section and comes within the provisions of G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. or is the biological father of the child, shall be entitled to petition for adoption of the child under Chapter 48 of the General Statutes."

SECTION 4. G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

(3) Repealed by Session Laws 1997-215, s. 11(a).

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice.

(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.

(9) An individual whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor to be adopted."

SECTION 5. G.S. 50-13.1(a) reads as rewritten:

"(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Any person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor child may not claim the right to custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both."

SECTION 6. G.S. 7B-402 reads as rewritten:

"**§ 7B-402. Petition.**

The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, 14-27.7, or 14-27.7A and the conception of the juvenile need not be named in the petition. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party."

SECTION 7. G.S. 7B-406(a) reads as rewritten:

"(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. No summons is required for any person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile. A copy of the petition shall be attached to each summons. Service of the summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor."

SECTION 8. G.S. 7B-1103 is amended by adding a new subsection to read:

"(c) No person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile may file a petition to terminate the parental rights of another with respect to that juvenile."

SECTION 9. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. Petition or motion.**

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile"; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile need not be named in the petition.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

SECTION 10. G.S. 14-226 reads as rewritten:

"**§ 14-226. Intimidating or interfering with witnesses.**

(a) If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, he shall be guilty of a Class H felony.

(b) A defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights shall be a violation of this section."

SECTION 11. G.S. 15A-902 reads as rewritten:

"**§ 15A-902. Discovery procedure.**

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a ~~request,~~ request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after either the probable-cause hearing or the date ~~he~~ the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before ~~he~~ the defendant has been afforded or waived a probable-cause hearing, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after the later of:

(1) The defendant's consent to be tried upon a bill of information, or the service of notice upon ~~him~~ the defendant that a true bill of indictment has been found by the grand jury, or

(2) The appointment of ~~counsel whichever is later.~~counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for ~~him~~ the defendant prior to or during a probable-cause hearing or prior to execution by ~~him~~ the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part."

SECTION 12. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

~~(a) Statement of Defendant. – Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the prosecutor; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial; except that disclosure of such a statement is not required if it was made to an informant whose identity is a prosecution secret and who will not testify for the prosecution, and if the statement is not exculpatory. If the statement was made to a person other than a law enforcement officer and if the statement is then known to the State, the State must divulge the substance of the statement no later than 12 o'clock noon, on Wednesday prior to the beginning of the week during which the case is calendared for trial. If disclosure of the substance of defendant's oral statement to an informant whose identity is or was a prosecution secret is withheld, the informant must not testify for the prosecution at trial.~~

~~(b) Statement of a Codefendant. – Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the State intends to offer in evidence at their joint trial; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement made by a codefendant which the State intends to offer in evidence at their joint trial.~~

~~(c) Defendant's Prior Record. Upon motion of the defendant, the court must order the State to furnish to the defendant a copy of his prior criminal record, if any, as is available to the prosecutor.~~

~~(d) Documents and Tangible Objects. Upon motion of the defendant, the court must order the prosecutor to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, buildings and places, or any other crime scene, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State and which are material to the preparation of his defense, are intended for use by the State as evidence at the trial, or were obtained from or belong to the defendant.~~

~~(e) Reports of Examinations and Tests. Upon motion of a defendant, the court must order the prosecutor to provide a copy of or to permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecutor. In addition, upon motion of a defendant, the court must order the prosecutor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the prosecutor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case.~~

~~(f) Statements of State's Witnesses.~~

~~(1) In any criminal prosecution brought by the State, no statement or report in the possession of the State that was made by a State witness or prospective State witness, other than the defendant, shall be the subject of subpoena, discovery, or inspection until that witness has testified on direct examination in the trial of the case.~~

~~(2) After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the State to produce any statement of the witness in the possession of the State that relates to the subject matter as to which the witness has testified. If the entire contents of that statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.~~

~~(3) If the State claims that any statement ordered to be produced under this section contains matter that does not relate to the subject matter of the testimony of the witness, the court shall order the State to deliver that statement for the inspection of the court in camera. Upon delivery the court shall excise the portions of the statement that do not relate to the subject matter of the testimony of the witness. With that material excised, the court shall then direct delivery of the statement to the~~

~~defendant for his use. If, pursuant to this procedure, any portion of the statement is withheld from the defendant and the defendant objects to the withholding, and if the trial results in the conviction of the defendant, the entire text of the statement shall be preserved by the State and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this subsection, the court, upon application of the defendant, may recess proceedings in the trial for a period of time that it determines is reasonably required for the examination of the statement by the defendant and his preparation for its use in the trial.~~

~~(4) If the State elects not to comply with an order of the court under subdivision (2) or (3) to deliver a statement to the defendant, the court shall strike from the record the testimony of the witness, and direct the jury to disregard the testimony, and the trial shall proceed unless the court determines that the interests of justice require that a mistrial be declared.~~

~~(5) The term "statement," as used in subdivision (2), (3), and (4) in relation to any witness called by the State means~~

~~a. A written statement made by the witness and signed or otherwise adopted or approved by him;~~

~~b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital or an oral statement made by the witness and recorded contemporaneously with the making of the oral statements.~~

~~(g) DNA Laboratory Reports. The defendant shall have the right to obtain a copy of DNA laboratory reports provided to the district attorney revealing that there was a DNA match to the defendant that was derived from a CODIS match during a comparison search involving the defendant's DNA sample, in accordance with the procedure set forth in G.S. 15A-902.~~

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section."

SECTION 13. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure ~~of evidence~~ by the State – Certain ~~reports~~ information not subject to disclosure.**

(a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not require the production of reports, memoranda, or other internal documents made by the prosecutor, law enforcement officers, or other persons acting on behalf of the State in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~ The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(b) Nothing in this section prohibits ~~a prosecutor~~the State from making voluntary disclosures in the interest of ~~justice.~~justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 14. G.S. 15A-905 reads as rewritten:

"**§ 15A-905. Disclosure of evidence by the defendant – Information subject to disclosure.**

(a) Documents and Tangible Objects. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(d),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of Examinations and Tests. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(e),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession and control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial, when the results or reports relate to his testimony. In addition, upon motion of ~~a prosecutor,~~the State, the court must order the defendant to permit the ~~prosecutor~~ State to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it available to the defendant if the defendant intends to offer such evidence, or tests or experiments made in connection with such evidence, as an exhibit or evidence in the case.

(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

(1) Give notice to the State of the intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of defense as described in this subdivision is inadmissible against the defendant. Notice of defense must be given no later than 20 working days before the date the case is set for trial pursuant to G.S. 7A-49.4, or such other later time as set by the court.

a. As to the defense of alibi, the court may order, upon motion by the State, the disclosure of the identity of alibi witnesses no later than two weeks before trial. If disclosure is ordered, upon a showing of good cause, the court shall order the State to disclose any rebuttal alibi witnesses no later than one week before trial. If the parties agree, the court may specify different time periods for this exchange so long the exchange occurs within a reasonable time prior to trial.

b. As to only the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court.

(3) Give the State, at the beginning of jury selection, a written list of the names of all other witnesses whom the defendant reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the defendant certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the defendant did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(d) If the defendant voluntarily provides discovery under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (c) of this section."

SECTION 15. G.S. 15A-907 reads as rewritten:

"**§ 15A-907. Continuing duty to disclose.**

If a party, ~~subject to compliance with an order issued~~who is required to give or who voluntarily gives discovery pursuant to this Article, discovers prior to or during trial additional evidence or witnesses, or decides to use additional ~~evidence,~~evidence or witnesses, and the evidence or witness is or may be subject to discovery or inspection under this Article, ~~he~~ the party must promptly notify the attorney for the other party of the existence of the additional ~~evidence.~~evidence or witnesses."

SECTION 16. G.S. 15A-908(a) reads as rewritten:

"(a) Upon written motion of a party and a finding of good cause, which may include, but is not limited to a finding that there is a substantial risk to any person or physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, the court may at any time order that discovery or inspection be denied, restricted, or deferred, or may make other appropriate orders. A party may apply ex parte for a protective order and, if an ex parte order is granted, the opposing party shall receive notice that the order was entered, but without disclosure of the subject matter of the order."

SECTION 17. G.S. 15A-910 reads as rewritten:

"**§ 15A-910. Regulation of discovery – Failure to comply.**

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or

(2) Grant a continuance or recess, or

(3) Prohibit the party from introducing evidence not disclosed, or

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice, or

(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article."

SECTION 18. G.S. 15A-959 reads as rewritten:

"**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

(a) If a defendant intends to raise the defense of insanity, ~~he~~ the defendant must ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a notice of ~~his~~ the defendant's intention to rely on the defense of ~~insanity.~~ insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) ~~If~~ In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether ~~he~~ the defendant had the mental state required for the offense charged, ~~he~~ the defendant must within ~~the time provided for the filing of pretrial motions under G.S. 15A-952(b)~~ a reasonable time prior to trial file a notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

SECTION 19. G.S. 15A-501 is amended by adding a new subdivision to read:

"**§ 15A-501. Police processing and duties upon arrest generally.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

...

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty."

SECTION 20. Sections 1 through 10 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. Sections 11 through 20 of this act become effective October 1, 2004, and apply to cases set for trial pursuant to G.S. 7A-49.4 on or after that date.

2003 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.**

☒ SENATE Committee Substitute for
H.B. 1139 A BILL TO BE ENTITLED AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL 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 the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☒ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S52-CSST-110 V.12 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 7, line 38

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"must be given within 20 working days ~~of~~ after ~~when~~ the case is set for".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT VIII

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 9, lines 19-30

( ) WHICH CHANGES THE TITLE

by deleting those lines and renumbering the remaining sections

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2003 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
S.B. 52 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE COURTS DISCRETION TO ALLOW COURT COSTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

ATTACHMENT X

final copy

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 52
Judiciary I Committee Substitute Adopted 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED HOUSE COMMITTEE SUBSTITUTE S52-PCS75356-ST-110

Short Title: Clarifications Regarding Mediation. (Public)

Sponsors:

Referred to:

February 17, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONNEL MEDIATIONS BY THE UNIVERSITY OF NORTH CAROLINA SYSTEM ARE NOT CONSIDERED "PRACTICE LAW"; THAT RECORDS CREATED AS PART OF THOSE PERSONNEL MEDIATIONS ARE NOT PUBLIC RECORDS; AND THAT PARTICIPANTS IN THOSE PERSONNEL MEDIATIONS ARE TREATED SIMILARLY TO PARTICIPANTS IN OTHER MEDIATIONS, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-3.3. Mediation matters.**

(a) Evidence of statements made and conduct occurring in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall not be subject to discovery and shall be inadmissible in any proceeding in any action on the same claim or any other claim, administrative or judicial, except in a proceeding to enforce a signed settlement agreement. Such evidence is not a public record under Chapter 132 of the General Statutes. Any evidence discoverable or admissible prior to the mediation shall remain discoverable and admissible, whether or not it is presented or discussed during mediation.

(b) No mediator, person training to become a mediator, nor participant in a mediation of a personnel matter involving The University of North Carolina or a constituent institution shall be compelled to testify or produce evidence with respect to

the mediation of the personnel matter in any civil proceeding, except to attest to the signing of any such agreement."

SECTION 2. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by ~~G.S. 7A-38.5.~~G.S. 7A-38.5 or by mediators of personnel matters for The University of North Carolina or a constituent institution."

SECTION 3. G.S. 15A-902 reads as rewritten:

"**§ 15A-902. Discovery procedure.**

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a ~~request,~~ request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, ~~he~~ the defendant may as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after either the probable-cause hearing or the date ~~he~~ the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before ~~he~~ the defendant has been afforded or waived a probable-cause hearing, ~~he~~ the defendant may

as a matter of right request voluntary discovery from the State under subsection (a) ~~above~~ of this section not later than the tenth working day after the later of:

(1) The defendant's consent to be tried upon a bill of information, or the service of notice upon ~~him~~ the defendant that a true bill of indictment has been found by the grand jury, or

(2) The appointment of ~~counsel whichever is later.~~ counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for ~~him~~ the defendant prior to or during a probable-cause hearing or prior to execution by ~~him~~ the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part."

SECTION 4. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

~~(a) Statement of Defendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the prosecutor; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial; except that disclosure of such a statement is not required if it was made to an informant whose identity is a prosecution secret and who will not testify for the prosecution, and if the statement is not exculpatory. If the statement was made to a person other than a law enforcement officer and if the statement is then known to the State, the State must divulge the substance of the statement no later than 12 o'clock noon, on Wednesday prior to the beginning of the week during which the case is calendared for trial. If disclosure of the substance of defendant's oral statement to an informant whose identity is or was a prosecution secret is withheld, the informant must not testify for the prosecution at trial.~~

~~(b) Statement of a Codefendant. Upon motion of a defendant, the court must order the prosecutor:~~

~~(1) To permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the State intends to offer in evidence at their joint trial; and~~

~~(2) To divulge, in written or recorded form, the substance of any oral statement made by a codefendant which the State intends to offer in evidence at their joint trial.~~

~~(c) Defendant's Prior Record. Upon motion of the defendant, the court must order the State to furnish to the defendant a copy of his prior criminal record, if any, as is available to the prosecutor.~~

~~(d) Documents and Tangible Objects. Upon motion of the defendant, the court must order the prosecutor to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, buildings and places, or any other crime scene, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State and which are material to the preparation of his defense, are intended for use by the State as evidence at the trial, or were obtained from or belong to the defendant.~~

~~(e) Reports of Examinations and Tests. Upon motion of a defendant, the court must order the prosecutor to provide a copy of or to permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecutor. In addition, upon motion of a defendant, the court must order the prosecutor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the prosecutor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case.~~

~~(f) Statements of State's Witnesses.~~

~~(1) In any criminal prosecution brought by the State, no statement or report in the possession of the State that was made by a State witness or prospective State witness, other than the defendant, shall be the subject of subpoena, discovery, or inspection until that witness has testified on direct examination in the trial of the case.~~

~~(2) After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the State to produce any statement of the witness in the possession of the State that relates to the subject matter as to which the witness has testified. If the entire contents of that statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.~~

~~(3) If the State claims that any statement ordered to be produced under this section contains matter that does not relate to the subject matter of the~~

~~testimony of the witness, the court shall order the State to deliver that statement for the inspection of the court in camera. Upon delivery the court shall excise the portions of the statement that do not relate to the subject matter of the testimony of the witness. With that material excised, the court shall then direct delivery of the statement to the defendant for his use. If, pursuant to this procedure, any portion of the statement is withheld from the defendant and the defendant objects to the withholding, and if the trial results in the conviction of the defendant, the entire text of the statement shall be preserved by the State and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this subsection, the court, upon application of the defendant, may recess proceedings in the trial for a period of time that it determines is reasonably required for the examination of the statement by the defendant and his preparation for its use in the trial.~~

~~(4) If the State elects not to comply with an order of the court under subdivision (2) or (3) to deliver a statement to the defendant, the court shall strike from the record the testimony of the witness, and direct the jury to disregard the testimony, and the trial shall proceed unless the court determines that the interests of justice require that a mistrial be declared.~~

~~(5) The term "statement," as used in subdivision (2), (3), and (4) in relation to any witness called by the State means~~

~~a. A written statement made by the witness and signed or otherwise adopted or approved by him;~~

~~b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital or an oral statement made by the witness and recorded contemporaneously with the making of the oral statements.~~

~~(g) DNA Laboratory Reports. The defendant shall have the right to obtain a copy of DNA laboratory reports provided to the district attorney revealing that there was a DNA match to the defendant that was derived from a CODIS match during a comparison search involving the defendant's DNA sample, in accordance with the procedure set forth in G.S. 15A-902.~~

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. Oral statements shall be in written or

recorded form. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section."

SECTION 5. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure ~~of evidence~~ by the State – Certain ~~reports~~ information not subject to disclosure.**

(a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not require the production of reports, memoranda, or other internal documents made by the prosecutor, law enforcement officers, or other persons acting on behalf of the State in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~ The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(b) Nothing in this section prohibits ~~a prosecutor~~the State from making voluntary disclosures in the interest of ~~justice.~~justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 6. G.S. 15A-905 reads as rewritten:

"**§ 15A-905. Disclosure of evidence by the defendant – Information subject to disclosure.**

(a) Documents and Tangible Objects. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(d),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of Examinations and Tests. – If the court grants any relief sought by the defendant under ~~G.S. 15A-903(e),~~G.S. 15A-903, the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession and control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial, when the results or reports relate to his testimony. In addition, upon motion of ~~a prosecutor,~~the State, the court must order the defendant to permit the ~~prosecutor~~ State to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it available to the defendant if the defendant intends to offer such evidence, or tests or experiments made in connection with such evidence, as an exhibit or evidence in the case.

(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

(1) Give notice to the State of the intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of defense as described in this subdivision is inadmissible against the defendant. Notice of defense must be given within 20 working days after the date the case is set for trial pursuant to G.S. 7A-49.4, or such other later time as set by the court.

a. As to the defense of alibi, the court may order, upon motion by the State, the disclosure of the identity of alibi witnesses no later than two weeks before trial. If disclosure is ordered, upon a showing of good cause, the court shall order the State to

disclose any rebuttal alibi witnesses no later than one week before trial. If the parties agree, the court may specify different time periods for this exchange so long as the exchange occurs within a reasonable time prior to trial.

b. As to only the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court.

(3) Give the State, at the beginning of jury selection, a written list of the names of all other witnesses whom the defendant reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the defendant certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the defendant did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(d) If the defendant voluntarily provides discovery under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (c) of this section."

SECTION 7. G.S. 15A-907 reads as rewritten:

"**§ 15A-907. Continuing duty to disclose.**

If a party, ~~subject to compliance with an order issued~~who is required to give or who voluntarily gives discovery pursuant to this Article, discovers prior to or during trial additional evidence or witnesses, or decides to use additional ~~evidence,~~evidence or witnesses, and the evidence or witness is or may be subject to discovery or inspection under this Article, ~~he~~ the party must promptly notify the attorney for the other party of the existence of the additional ~~evidence.~~evidence or witnesses."

SECTION 8. G.S. 15A-908(a) reads as rewritten:

"(a) Upon written motion of a party and a finding of good cause, which may include, but is not limited to a finding that there is a substantial risk to any person or physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, the court may at any time order that discovery or inspection be denied,

restricted, or deferred, or may make other appropriate orders. A party may apply ex parte for a protective order and, if an ex parte order is granted, the opposing party shall receive notice that the order was entered, but without disclosure of the subject matter of the order."

SECTION 9. G.S. 15A-910 reads as rewritten:

"**§ 15A-910. Regulation of discovery – Failure to comply.**

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or

(2) Grant a continuance or recess, or

(3) Prohibit the party from introducing evidence not disclosed, or

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice, or

(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article."

SECTION 10. G.S. 15A-959 reads as rewritten:

"**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

(a) If a defendant intends to raise the defense of insanity, ~~he~~ the defendant must ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a notice of ~~his~~ the defendant's intention to rely on the defense of ~~insanity.~~ insanity as provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a reasonable time prior to trial. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(b) ~~If~~ In cases not subject to the requirements of G.S. 15A-905(c), if a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether ~~he~~ the defendant had the mental state required for the offense charged, ~~he~~ the defendant must within ~~the time provided for the filing of pretrial motions under G.S. 15A-952(b)~~ a reasonable time prior to trial file a notice of that intention. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make other appropriate orders.

(c) Upon motion of the defendant and with the consent of the State the court may conduct a hearing prior to the trial with regard to the defense of insanity at the time of the offense. If the court determines that the defendant has a valid defense of insanity with regard to any criminal charge, it may dismiss that charge, with prejudice, upon making a finding to that effect. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on the defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial."

SECTION 11. G.S. 15A-501 is amended by adding a new subdivision to read:

"**§ 15A-501. Police processing and duties upon arrest generally.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

...

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty."

SECTION 12. Sections 3 through 11 of this act become effective October 1, 2004, and apply to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after October 1, 2004. The remainder of this act is effective when it becomes law.